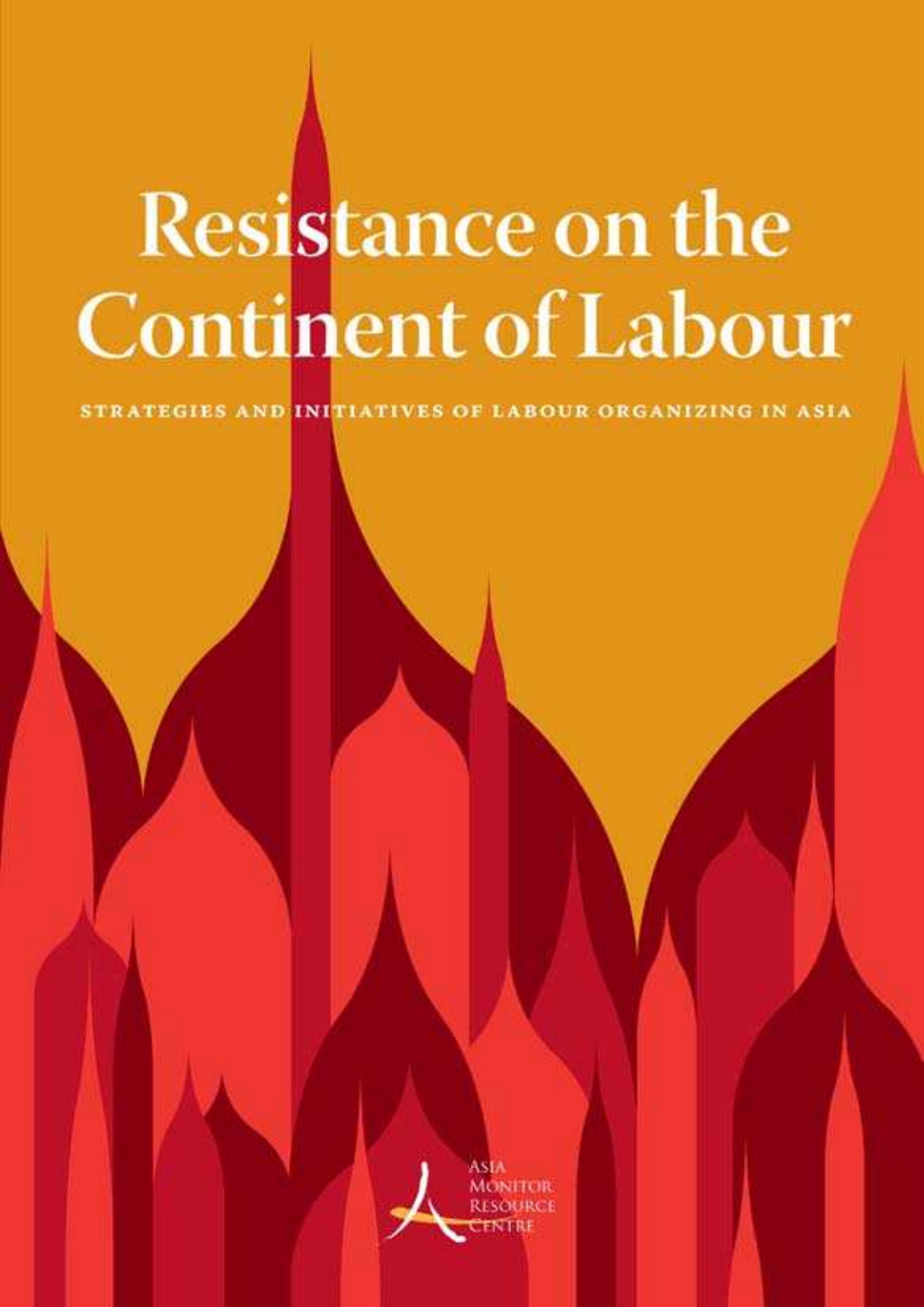
Resistance on the Continent of Labour

STRATEGIES AND INITIATIVES OF LABOUR ORGANIZING IN ASIA



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Resistance on the Continent of Labour

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STRATEGIES AND INITIATIVES OF LABOUR ORGANIZING IN ASIA

Edited by FAHMI PANIMBANG

ASIA MONITOR RESOURCE CENTRE

Resistance on the Continent of Labour
Strategies and Initiatives of Labour Organizing in Asia
edited by Fahmi Panimbang

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Foreword

by DAE-OUP CHANG

After a few centuries of 'humiliation' that involved colonization, dependency and exploitation of its resources and population, Asia finally came back to the main stage of the global economy. The continent managed to do so by turning itself into a global factory, which now produces more than a third, if not half, of the world's manufactured goods. It has become the number-one destination for foreign direct investment and is also likely to become the best destination for financial investment too. The remarkable growth of contemporary Asia can only be matched by East Asian forerunners of late development in the 1970s. It seems that even the global recession, which marred the global economy from 2008, could not stop the forward march of the continent. After a couple of years of slowdown, the continent bounced back and began to contribute slightly less than half of the global economic growth.

It has been said that this economic growth lifted so many people out of their long-lasting misery of poverty. China alone appears to have lifted about 289 million people out of poverty between 1999 and 2010, reducing its poverty headcount ratio from 35.6 per cent in 1999 to 11.8 per cent in 2010. However, perhaps this is not the time to celebrate but the time to be concerned about the future of the continent. This is because this so-called poverty reduction is not based on the neoliberal myth of trickle down. Neither is it based on increasing social welfare provided by democratizing states the continent. The Asian rich are getting richer, while Asian states are becoming frugal in sharing their powers with the ordinary working population. Then how have people living under the poverty line been decreasing? The reduction of

absolute poverty, even if we accept the quasi-scientific calculation of people under the poverty line by international financial institutions, is rather a result of the vast population toiling to near death in factories, fields and streets. Asia has become a continent of labour where hundreds of millions of workers are making their living at the different moments of the globalizing circuit of capital. Moreover, it is not just a continent of labour but a continent of poor labour.

The reduction in the number of the 'working poor' is far less impressive if compared to the growth rate of the continent. For instance, East Asia's ratio of the working poor among the poor is higher than other 'poor' regions, such as Sub-Saharan Africa where underemployment-related poverty is a more serious problem. In short, Asians got jobs that lifted them out of absolute poverty. However, they have only bad jobs in which they have to work more than ever before to keep their income even slightly above the subsistence level. According to the ILO, between 2000 and 2012, flourishing East Asia managed to reduce the proportion of vulnerable employment by only about 8 per cent (including own-account workers and contributing family workers). Currently, half of Asia's working population have these survival jobs. In South Asia, vulnerable employment accounted for more than 76 per cent of total employment in 2013, only down 4.7 per cent from 2000. Not only are people in these clearly vulnerable forms of employment suffering from poverty. The transnationalizing circuit of capital now employ millions of Asian workers in factories manufacturing export goods. Workers in Asian developing economies become necessary parts of the transnational labour regimes built by TNCs across Asia. TNCs from more advanced capitalist economies utilise labour transnationally however without creating an upward convergence of working conditions and quality of life for the working class. Rather, TNCs divide the Asian working class into segments combined hierarchically, and each of these segments serves different moments of the globalizing circuit of capital. To make the best out of these transnational labour regimes, Asian states are competitively introducing new labour laws and regulations that aim to allow corporations in Asia to exploit their own workers. The naïve post-war anticipation that the diverse forms of capitalist labour would evolve smoothly and converge to the form of labour once dominant in European welfare states did not come true. Instead, the evolution of capitalist labour has become a process without a destiny. Rather than creating a convergence of labour regimes and a coherent global working class who shares similar institutional protection and welfare, the neoliberal expansion of capitalist labour accompanies a process of universalizing capitalist labour on the

one hand and segmenting workers with the presence of particular kinds of labour regimes across different global local spaces on the other hand. This means that Asian economies may have overcome absolute poverty but not their structural reliance upon cheap and vulnerable labour. A few centuries of humiliation of the continent may be over with the advance of Asian capitalist economies. However, the humiliation and indignity suffered by the population is not.

It is this humiliation that contributions to this timely book try to address. The fact that Asian capitalist development is not creating a coherent working class once observed in advanced capitalist economies makes us reconsider the usual strategies of the labour movement that the working class movement in advanced capitalist economies once used and existed as a model for the labour movement elsewhere. Apart from the endeavour to secure workers' freedom of association and build alternative communities based on solidarity rather than the non-stop pursuit of self-interest, none of these strategies can be taken for granted anymore. Rather than evaluating workers' struggles in Asia by mirroring them in the half-dead model of the labour movement, contributions in this volume rightly focus on new, innovative but uncompromizing strategies of diverse labour movements in Asia.

Readers of this collection will see how diverse labour regimes are in contemporary Asia and how workers are coping with them by inventing new and imaginative strategies and tactics in different circumstances. There are stories about some heroic efforts made by workers and members of communities to build firm regional solidarity. These can be read together with the story of a few decade-long transnational campaigns that give us a better idea about advantages and problems involved in up-scaling local movements. There are also stories about the process of national movement-building. These can be complemented by the analyses of firm-level organizing in different industries, without which a national movement cannot be sustained. There are testimonies arising from a long-term effort to organize service sector workers. Readers will know what specificity this form of organizing has by comparing the case to the testimony from organizing experience in traditional manufacturing such as the automobile industry. The diverse experience of the workers movement in Cambodia, China, Indonesia, India, Malaysia, Myanmar, Pakistan, the Philippines, South Korea, Thailand and Vietnam does not build a model for a singular labour movement on the continent of labour. Nonetheless, these experiences clearly demonstrate the subversive power of the living agency of labour and offer a very useful lessons to learn from one another. What is important is that there will be labour

organizing in a similar context in the near future as the constant movement of capital across the region will not allow these contexts to be unique to only one trade union, industry, or country. It is in this sense that each individual experience does not exist in isolation but as a collective experience. This can be the beginning of a firm and supportive continental solidarity which is the only means of ending the real humiliation of the continent of labour.

INTRODUCTION

Labour Struggles in Asia

by FAHMI PANIMBANG

In the past decade we have witnessed an upsurge of labour activism and radical struggles in Asia. Labour has been a leading and important political actor. Dynamic labour movements have emerged and have constituted some of the most visible forms of struggle against neoliberalism. This is in contrast with usual explanations pronouncing that labour is dead, as they are no longer able to be an agent of progressive change. Unions have declined and membership rates have been falling in many countries around the world. Labour movements have encountered a host of challenges for survival and expansion. Indeed, neoliberalism has destroyed the very conditions that made union growth possible in many countries (Luce, 2014). One might argue that what has happened in Asia is not surprising as the region has experienced an increasing proportion of capitalist production. However, interpretations of labour activism in the age of neoliberal capitalism demands urgent, robust and critical analysis. There are theoretical and empirical gaps that need to be analysed: why such collective actions and radical struggles took place in some of the Asian countries? What are the new forms of resistance and protest, *vis-a-vis* the prevailing political environment? Who are the emerging actors? In which sectors and why? Are there any impacts? The purpose of this book is to provide some empirical answers to the questions posed above. In particular, it is aimed at providing an insight into how we see the global trajectories of capitalism from a labour perspective in the specific context and setting in Asia. It is about the 'labour side' of the story of the rise of Asia as the global factory.

It is important to note that during the neoliberal period, the global working class has grown by at least two thirds, while since the 1990s East Asia alone has added around 800 million new workers to its labour force. According to the ILO, between 1982 and 2011, China added almost 341 million non-agricultural workers to global capitalism (from 141,360,000 to 491,260,000). More than 201 million workers in India are now employed in non-agricultural sectors. This number has almost doubled in less than 20 years. There are almost 130 million labour forces in Indonesia which the waged workers in the country has grown rapidly in the last 30 years. Thus, as a home to a labour force of 1.8 billion, or approximately 60 percent of the total global labour force, Asia is the continent of labour on which factory Asia stands. It is Asia's transformation into the continent of labour that underpins Asia's transformation into the global factory (Chang, 2015).

Labour Struggles Against Neoliberal Capitalism

The global political economy today is at a remarkable juncture with many multifaceted challenges. Two are specifically crucial. The first, we witness the competition between, on the one hand, the presently dominant power of corporations and financial institutions in local and global politics and, on the other, a multiplicity of counter-hegemonic labour and social movements fighting for social justice. The second is the threat to civilization posed by ever-expanding capital accumulation that leads to the risk of environmental catastrophe on a global scale (Barenberg, 2013). The increase in capital accumulation is reflected in the formation of cross-border production systems (also known as Global Production Network), and even more complex global supply chains that has been in existence at least since the 19th century when cotton from Asia was supplied to the British textile industry during the colonial period. The cross-border production network and global supply chain are key existing global systems through which corporations and financial institutions exert economic power. As we all know, the systems translate economic power into political power, evading local jurisdiction and diminishing sovereign authority. The lengthy supply chains and the complex network of cross-border production that is practised today have become increasingly characteristic of many industries, and this presents specific challenges for labour movement. Moreover, the most pressing issue today is that the corporations are now able to guarantee their future profit will be made, as they can file law suits against any state that tries to change the business agreement.

It is obvious that cross-border production and global supply chains are the means of capital accumulation. These subsequently changed peoples' mind-set, norms, and their views on how they work i.e. how they earn a living. Today, almost all ways to work and make a living are determined by capital movement,

transnational corporations, and financial institutions. The logic and model of working in the era of neoliberal capitalism has expanded into everyday life of societies in many countries. Transnational corporations have grown rapidly and accrue huge profits through their exploitation of society and the environment (Pandita and Panimbang, 2013). At this juncture, trade unions and workers are vital as they are at the heart of capitalist accumulation, and therefore have the potential to disrupt it and force capital to make compromises, joining forces with social movements who contest neoliberalism from below. During a rally in the general strike in Indonesia in 2013, a transport and logistics workers' union rightly said, '*The workers who move this country can also stop it!*'

It is encouraging to see that workers managed to find strategic points of intervention to make their voices heard. In many cases, they are capable of forming alliances to exert their political power. It is not merely leadership that plays a key role in determining the outcomes of the struggles, but workers are increasingly able to mobilize resources in a broader political context in which the struggle takes place. They have also been able to retain their autonomy and effectively build a collective identity to revive the labour movement (Ness, 2016). Despite of structural inequalities in the global system that imped the labour movement to advance, and in the face of increasingly repressive retaliation from the state and capital to the workers' growing capacity of organizing and mobilization, a new generation of labour movements in Asia is developing a class consciousness and playing an important role in the class struggle.

Struggles Within or Against the System?

It is also important to note that the struggle that workers in Asia have taken up has occurred in a particular context, that is, the debate and political contest around whether the workers, in the South and the North alike, should reform or struggle against the global system. There are at least two major opposing positions: the reformist and the radical. The reformist position suggests that the global supply chain and global production network can be reformed by improving the working conditions along the value chains, making them fair and just. Among the proponents of this idea are consumer groups and brands-targeted campaigns, mostly based in the North. Meanwhile, the radical position believes that the system is embedded in neoliberal capitalism that brought about the ever increasing and prevailing power of corporations and financial institutions that should be ended. The proponents of this idea argue that the system cannot be reformed. Rather, it should be diminished. Issues and problems that emerged along the value chains, which emanated from the neoliberal capitalism, will never be adequately addressed by focusing on a particular issue within a particular

company, or even by focusing on a particular industry. Many cases illustrate the failure and challenges that activists have faced in addressing specific issues, such as a sweatshop in one particular factory, at the expense of addressing the root causes of the problem. The campaign often seemed successful at the surface, but it always failed in the longer-run, as the sweatshop in the workplace still continues and the company's business continues to run as usual. Of course it is important to make an improvement in one factory or an industry, but this is obviously not sufficient, and this should not be the main area of the battle (Pandita and Panimbang, 2013). Furthermore, the radicals argue that the problem arising from the global system should be addressed in a way that acknowledges and focuses on the root problem, which is the complex capitalistic system that involves various actors including states and global capital.

Another case shows the failure of reforming the system instead of diminishing it: The Global Framework Agreement (GFA) between global unions and transnational corporations. There is no doubt that the GFA has a role to play. However, they cannot succeed in protecting labour rights in value chains unless the workers are empowered to make use of them and go beyond them. Otherwise they are, like a fair trade, a mere rubber stamp of good ethics for Western companies and consumers (Pons-Vignon and Nkosi, 2015). The GFA is not a strategy in itself. Nor does their signing per se create new, transnational arenas of labour relations. Without active, focused and well-coordinated feedback from labour unions, they remain dormant (Fichter, 2015).

It is in this context and debate that the labour struggles discussed in this book represent workers' political aspirations at the grassroots level that urge an end to neoliberal capitalism, rather than to reform it.

Actors, Sectors and Strategies of the Resistance

Radical struggles in most of Asian countries have occurred amidst the prevailing problems that workers face. The challenges are even more complex. There are at least four common problems: (1) low wages policy, (2) unfavourable labour legislation, (3) growing proportion of temporary workers and an increasing use of (student) interns, and (4) rampant union busting. The wage issue occurs in many countries, which is linked to either a lack of legislation or negative labour reform, failure to implement such legislation, or the absence of unions and thus collective bargaining. In most countries, low wages policy and dismal working conditions have driven workers to protest.

Indeed, it is not easy to find a pattern of labour struggles across Asia, as the development in the region has been dynamic and uneven. The trends, however, match the neoliberal mode of development. Most resistance movements are

concentrated in urban rather than agrarian sectors, mostly leaning toward labour-intensive industries where the precariousness has been the norm: informalization, flexibilization, and dispossession. Informalization in this context is not only about the transformation of formal workers to informal due to flexibilization. Rather, it is the process in which informal capitalist labour makes up an increasingly larger portion of the increasing global capitalist labour force. They are everywhere: agrarian workers in rural areas, informal economy workers in expanding cities, neoliberal sweatshops in booming industrial towns. These workers share insecurity of jobs and instability of life (Chang, 2015).

An intensive discussion among labour activists and scholars in Asia was held in late 2014 to reflect on labour movements in the past decade (AMRC, 2014a). The discussion identified some of emerging actors, sectors and strategies of labour struggle which will be elaborated below.

Actors

Age plays an increasingly major role in new actors of labour struggles in most Asian countries. Indonesia witnessed an increase in the young generation of workers, mostly under 25, in mobilization. One of the reasons for this radicalization is the spread of left-wing activists in unions, who introduced labour militancy and class consciousness. The labour movement in Indonesia has been recovering from dictatorship since 1998, and ever since, a wave of strikes has taken place in many towns and cities that involved several million workers. In the face of internal fragmentation and external challenges, the Indonesian labour movement has been vibrant in shaping the country's political dynamic (Panimbang and Mufakhir, forthcoming). A young generation of union leaders has also challenged the existing organizational culture of the conservative union, and transformed it into meaningful changes for the workers and even for local communities (chapter 8).

In China, predominantly young migrant workers in some key manufacturing industries have been engaged in spontaneous and wildcat strikes. The migrant workers have begun to challenge the state's regulatory regime on labour, which is based on individual rights. However, the introduction of a regulatory framework based on collective rights is being hindered by the state's manipulation of trade unions and the strong influence of global capital on local labour policy (chapter 1). Therefore, as Leong (chapter 2) suggests, the strategies of the new working class in China today should promote more people-to-people exchange of experiences and ideas, among others, to provide the new generation of Chinese working class with an international perspective.

In South Korea, young workers have also played an important role, such as the formation of the first-ever independent trade union in 2013 at the Samsung Corporation since it was established in 1938 (chapter 3). Although the union was formed by the service technicians repairing Samsung electronics products (Samsung Electronics Service), and it is not in the core of the company, the union foundation was historically significant. It took so many years for the workers to be recognized by the government and the company that they have the freedom to organize and the rights to collective bargaining; it was a small achievement yet remarkable, as it was gained after several young workers sacrificed their lives, after more than 60 young women workers had died due to occupational illness, and with more than a hundred workers still suffering from leukaemia and cancers (see chapter 15). Meanwhile in Cambodia, young workers have particularly played a major role in the living wage struggle. They engaged in the non-violent protests that took place in nine areas in the late 2013 and early 2014, where more than 100,000 workers from various garment factories participated in a series of massive industrial actions. The peaceful protest, however, was responded by excessive use of brutal force by the police and armed forces that killed at least four workers and severely injured at least 38 other workers and supporters (AMRC, 2014b).

In Malaysia, although still hardly in a position of leadership, women workers play an important role in Malaysian labour movements, mostly with grassroots industrial action as shown in the minimum wage campaign. The civil society in Malaysia plays a leading role by far, and there have been attempts to bring together civil society, the labour movement and migrant workers (see chapter 11). Women, as grassroots leaders, are also prevalent in India, largely in the informal sector, and workers in the rural sector are the emergent actors in many protests in the country. In the Philippines, it has been observed that unions led by women are more persevering and organized, such as two of the biggest unions in Export Processing Zones in Cavite. It is community-based groups who emerged as leading actors in the labour struggles in the country. Meanwhile in Thailand, the active role of women organizers has also been seen, struggling for gender equality and inclusive labour activism in which the masculine culture and gender dynamics within union's decision-making processes play out in everyday life (chapter 5).

Sectors

In the last few years, education has emerged as an important sector in Indonesia in workers' struggle in terms of frequency of protest on a nation-wide scale. Teachers' unions and associations have been fighting for the rights of over a million teachers who are in precarious positions. Contract teachers earn a meagre salary, as little as US$ 30 per month. Traditional sectors, which include garment,

electronics, automotive and other manufacturing industries, however, are still dominant in terms of the number of workers involved in overall industrial actions, followed by some of state-owned enterprises (electricity, toll roads, mining, oil and water). In China, the manufacturing and service sectors contributed to the increase of wildcat strikes, including footwear, electronics, automotive, retail, toy, furniture, and some service sectors including security guards, among others.

Meanwhile in India, the formal sector in the manufacturing industries, mainly textile, electronics, and automotive are still playing a significant role in the movement, including the struggle of the Maruti Suzuki workers, which symbolizes the nascent of new labour movement in the country (chapter 12). There are also rural movements who are mainly focused on the issue of the rural benefit scheme implementation that recently emerged. In Cambodia, the garment industry has been leading in overall industrial action. The industry has been the chief engine of the Cambodian economy for the past two decades since its establishment in 1994. However, the garment workers still account for a large part of the country's working poor, which has driven the workers to protest (chapter 6). Service is the new sector that has arisen to play a critical role in the struggle of Cambodian workers.

In the Philippines rural sector, mostly plantation and mining, including beneficiaries of failed agrarian reform, have arisen as the important sector. There is resistance in the public sector against privatization, including hospitals and the public transport system. Moreover, labour protests have commonly been seen in the manufacturing sector, including the electronics/ICT, which are predominantly foreign capital (chapter 9). But the emergent resistance in the banking sector and the business process outsourcing (BPO) industry has taken place amid minimal resistance in the service sector (chapter 10).

In South Korea, public sectors in state-run companies such as railways, gas and electricity have emerged to play a strategic role in radical opposition, apart from the usual private sectors in manufacturing industry such as electronics and automotive. There is also the urban service sector, such as Samsung Electronics Services workers (see chapter 3) and school workers, including women caterers who fought for their rights. In Malaysia, the private sector, mostly manufacturing and services, have been playing a leading role in demanding the increase of the minimum wage. In Vietnam, labour-intensive industries, such as garment, textile and wood processing are the major sectors in the spontaneous protest movement. In Pakistan, workers' resistance has mainly focused on privatization of public sector, including electricity, national airlines, and the state-owned steel mills.

Strategies

Direct action has been practised increasingly in many Asian countries in the last decade. Indonesian workers have had relatively new experiences with factory raids that took place for seven months in over a hundred factories in 2012, and two successful general strikes in 2012 and 2013 that engaged two million and three million workers respectively. In addition, toll roads blockades and industrial zone blockades are also among the popular forms of workers' protests to articulate their political aspirations (Panimbang and Mufakhir, forthcoming). Many have taken the most militant yet tragic way by taking their own lives as the martyrs of labour movement, such as several cases of suicides in South Korea urging to end the exploitation (see chapter 3). In Indonesia, Sebastian Manuputty's self-immolation during the Labour Day celebration in 2015 also illustrates the workers' radical fight against injustice; Manuputty shared his wish on a Facebook post around half an hour before his political action: '*I will do all I can so that you, we and they will open their eyes, ears and hearts for social justice for the entire people of Indonesia*' (Jakarta Globe, 2015).

Moreover, the rise of workers' collective actions in some cases has aligned with other social movements. Alliance building has been seen as workers' unified response to address their common issues. Although in general the collaborative initiatives are still mostly challenging, collective strategies have proven to be more effective. This is shown in the collaboration between the brick kiln workers and the Labour Qaumi Movement in Pakistan (chapter 14), and it was the alliance of labour unions at grassroots level that made the Indonesian general strikes successful (chapter 13).

In Cambodia, during the peaceful protest for minimum wage increase in late 2013 and early 2014, many different groups participated in the strike together with garment workers and labour groups, including Boeung Kak Lake activists, a group of monks, tuk-tuk drivers, domestic workers, street vendors, and civil servants. Even general public joined and supported the protest. A major feature of this strike was that it was a 'self-generated strike' by rank-and-file workers almost unanimously supporting the demand to raise the minimum wage (AMRC, 2014b). In India, more than 150 million workers were mobilized in general strikes in both 2015 and 2016 (see chapter 12). In some cases, unions in the automotive and electronics sectors came together, and in the industrial sector, some unions are compelled to form industry-wide alliances. Alliances between trade unions and national movements also continued, depending on common interests.

In China and Vietnam, where holding a demonstration is against the law, spontaneous and wildcat strikes are among the most popular workers' strategy

to protest (chapter 1, 2 and 7). In the Philippines, the basis for alliances is often analysis of issues and immediate action. This was seen in the case of the multi-sectoral support in the wake of the massacre of sugar plantation workers (Hacienda Luisita Massacre) in 2004. Sectors including youth, peasant, and the church were organized, especially in light of the issue's political dimension. The last general strike in the Philippines took place in 2006 against the oil deregulation law and the mining act, which paralysed the country. Labour movements routinely took part in broader mass protests (AMRC, 2014a).

Nowadays, the use of social media has been increasingly popular among young workers for organizing action in most of the Asian countries. Social media and various group messaging platforms in smart phones are used to organize the workers, to hold discussions and debates, and to spread news of their success. It is a crucial tool for most workers to overcome the geographical barriers. In some countries, workers developed diverse forms of struggles and carried out various cultural performances as a political protest. They also run a podcast programme to reach out to union members. As the advancement of technology and communication has been utilized by the labour activists around the world, labour now is trying to catch up with capital's long campaign of (capitalist) globalization. Transnational communication and networking had become easier. Local struggles, such as the one that took place in new industrial estates in Myanmar to influence emerging forms of labour regulation in the country (see chapter 4), may be easily turned to transnational repertoires of actions.

About the Book

This book provides an insight into how we see the global trajectories of capitalism from a labour perspective in the specific context and setting in Asia. It represents an ongoing effort by labour activists to challenge capital in their particular context. The book discusses a unique perspective on efforts towards the changes of labour relations, with concrete examples of the implementation of different workers' organizing strategies and initiatives. It also shows that there are different strategies that workers can implement to change the current situation. *Resistance on the Continent of Labour* is about the 'labour side' of the story of the rise of Asia as the global factory. Workers in Asia identified strategic points of intervention where they are able to make a small change in order to trigger a broader and more significant change.

The authors of the book are activists and scholars who engaged in counter-hegemonic struggles against the primacy of the market functioning over the well-being of workers and society as a whole. They are directly engaged in

advocacy work for social justice based on their locally-grounded experiences. They believe that knowing the situation in other countries is the first step for building international solidarity. The knowledge that the authors of this book presented is significant, but they need to be leveraged in further struggles in the future, to change Asia as the continent of labour to be humane, equal, and just.

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PART I

Emerging Forms of Labour Resistance: Actors, Sectors, and Strategies

CHAPTER ONE

Constrained Labour Agency and the Changing Regulatory Regime in China

by CHRIS KING-CHI CHAN

Introduction

Since its economic reform in the 1980s, China has been seen as driving a 'race to the bottom' amongst developing countries and exerting a negative impact on global labour standards (Chan, 2003). Poor working conditions in the country have triggered workers' collective unrest and demands for better wages and treatment; the government has been compelled to take serious measures to contain the unrest, including the implementation of the Labour Contract Law in 2008 (C. Chan, 2010). However, as Chen (2007) argues, the Chinese legal framework on labour is based on individual rights. This type of legal regime has not helped to forestall a slew of strikes in the wake of the global economic crisis. After a strike by Honda workers, staged in May 2010, gained global attention (A. Chan, 2010; *New York Times*, 11 June 2010; *The Observer*, 4 July 2010),[1] the Chinese government stepped

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1 The majority of newspaper articles referred to in the text are not listed in the References for this

up its efforts to pacify the disgruntled workers by trying to develop a regulatory framework based on collective rights, including elements of collective workplace bargaining mechanisms and democratic trade union reform. This has given hope to many scholars and policy makers about the possibility of formulating a legal framework in China based on collective rights[2] (Chan and Hui, 2013).

In fact, strikes among migrant workers are not a new phenomenon and have been well investigated by a number of previous studies. Su and He (2010) demonstrate the capacity of the local government to constrain workers' unrest by judicial means. Chen (2010) highlights the role of official trade unions in the settlement of strike cases. Both emphasise the institutional power of state authorities. On the other hand, the case studies in Chan and Pun (2009) focus on the potential of workers' powers to challenge institutions. Borrowing from Coe and Jordhus-Lier (2011: 211) the concept of 'constrained [labour] agency', this chapter evaluates both the possibilities and the constraints facing the activism of Chinese migrant workers. It demonstrates the interplay between structures, institutions and actors which shapes and reshapes the regulatory regime for labour in China. It argues that Chinese migrant workers have begun to challenge the state's regulatory regime, which is based on individual rights. However, the introduction of a regulatory framework based on collective rights is being impeded by the state's manipulation of trade unions and the strong influence of global capital on local labour policy.

Data for this chaper have been collected through fieldwork in China. Sources of information include ethnographic observation in industrial zones, interviews with workers and labour NGO staff, as well as media reports and the internal documents of labour NGOs.[3] For the Honda case, I paid three visits to the workers in their dormitories during the strike and interviewed forty workers in May and June 2010. Since then, I have also maintained frequent contact with their key representatives by phone calls, e-mails and meetings.

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chapter. A large number of newspapers were consulted, many of them published in Chinese, but article titles and specific authors were not recorded in all cases. News sources are therefore referred to by newspaper title and date in the text, to ensure consistency of referencing.

2 Since the Honda strike, a number of top universities in China, such as Renmin (People's) University, Sun-Yat-Sen University, Nanjing University, Beijing Normal University, and Hong Kong University, have held conferences on the topic of collective bargaining and trade union reform, attended by trade union cadres, government officers, local and foreign scholars. Many participants have commented that the Honda strike was a turning point for Chinese industrial relations, from individual rights to collective rights.

3 'Labour NGOs' refer to labour service centres which are independent from the state and the official trade union. Most of the labour NGOs in China are funded by overseas foundations and run by pro-labour intellectuals or workers themselves.

After introducing a theoretical perspective on labour agency, the state and regulatory regimes in the next section, the individual rights-based nature of China's regulatory regime will be analysed, and the opportunities and constraints for labour agency under the current regulations will be discussed. This is followed by an elaboration of the Honda case that demonstrates how labour activism in recent years has attempted to drive labour regulations towards a collective rights-based framework and evaluates the consequences of this, before a conclusion is presented.

Analytical Framework: Labour Agency, the State and the Changing Regulatory Regime

In the past three decades, economic globalization, in terms of escalating foreign direct investment (FDI) and international trade, has significantly reshaped power relations around the world. The relocation of labour-intensive manufacturing from the North to the global South, where an 'unlimited supply' of low-paid and less organized labour is available, has dramatically weakened the collective and political power of organized labour (Coates, 1993; Frobel et al., 1980). A dominant discourse in international political economy is that, while the state retreats, transnational corporations triumph, and while the trade union movement declines, new transnational social movements proliferate (see Cohen, 1998; Edwards and Elger, 1999). As Newell (2000: 121) puts it, '[t]ransnational corporations appear to wield power without responsibility. They are often as powerful as states and yet unaccountable'.

The case of China is different from other developing or transition countries because a strong authoritarian government has remained in power and has successfully organized and directed the core economic activities of the country. China is thus regarded by many political economists as a developmental state, or as pursuing the 'China model' or even the 'Beijing Consensus', which differs from the USA-led neoliberalist development strategy as advocated by the Washington Consensus (Baek, 2005; Jiang, 2011). However, in terms of employment relations, neoliberal deregulation has been taking place in China since the early 1980s and has accelerated since 1992; it smashed the 'iron rice bowl' of the urban workers and has led to a dramatic increase in job casualisation and labour market informalization (Deyo, 2012; Kuruvilla et al., 2011). China's rapid economic growth and high employment rate have relied heavily on the labour-intensive export-oriented manufactures which are financed by FDI (Baek, 2005; Jiang, 2011). Against these socio-economic changes, global sweatshops, which are seen as key drivers of the race-to-bottom in labour standards (Chan, 2003), have mushroomed in China. All of these factors indicate the dominance of global

capital and the decline of state influence in China's 'despotic' labour regime (Lee, 1998; Pun, 2005a).

As a response to the global power shift, the new social movements emerging in advanced capitalism have departed from the state-centric view of politics and have developed transnational networks of social movements with the aim of social change (Cohen, 1998). It has been suggested that, in the face of declining working conditions in the global South, consumer movement-driven corporate social responsibility (CSR) has replaced the role of organized labour in constraining management practice, and that voluntary regulations have increased as an alternative to the state-led compulsory regulation of business (Blowfeld and Frynas, 2005; Nadvi, 2008; O'Rourke, 2003).

This position has been criticized by many labour and industrial relations scholars who put the state and workers' organizations at the centre of their inquiries. Critiques have arisen on three fronts. First, although the contents of the codes of conduct entailed in CSR are in line with the core labour standards of the International Labour Organization (ILO), including freedom of association and the right to engage in collective bargaining, there is scepticism regarding monitoring and implementation without compulsory state regulation or a powerful workplace trade union (Pearson and Seyfang, 2001; Pun, 2005b; Sum and Pun, 2005; Wells, 2007). Second, the relocation of production to the global South and the consequent economic development there also strengthens the organizing capacity of workers in the developing world (Hutchison and Brown, 2001; Silver, 2003); from a historical point of view, workers cannot be understood as merely victims of globalization (Chan, 2003; Chan and Robert, 2003; Mazur, 2000; Ross and Chan, 2002). Third, it is a myth to claim that the state has become 'powerless' in the new political economy (Weiss, 1998). At least some nation states still play significant roles in the regulation of labour and industry. Edwards and Elger (1999: 2), for example, argue forcefully for '[t]he path-dependent distinctiveness and the continual importance of national and regional forms of labour regulations'.

This latter position is reinforced by recent debates around the global value chain/global production network (GVC/GPN). Scholarly works have started to criticize the 'firm-centrism' (Bair, 2005; Gibbon et al., 2008) or 'network essentialism' (Taylor, 2007) of the GVC/GPN tradition (see Das, 2013). Werner (2012: 1), for example, criticizes the GPN literature for reducing 'the analysis of capitalism to that of the firm and inter-firm relations, eliding questions of class, gender, agrarian social relations, relations of production, and the position of nation-states and regions in global trade'. Some go further in calling for an evaluation of the rise of 'labour agency' in GPNs: Cumbers et al. (2008: 369–70)

argue that 'to date, little has been said about labour as an active constituent of the global economy, rather than the passive victim of restructuring processes… labour [agency]…remains a fundamental component of GPNs'. In their concept of 'constrained labour agency', Coe and Jordhus-Lier (2011: 229) put it like this: '[t]he multiple subject positions of workers mean they constantly operate with complex and variable landscapes of opportunity and constraint: while for some their positionality within these structures will offer "wiggle room" for reworking power relations, for others meaningful agency will be tightly circumscribed by the intersection of structural forces'.

This intellectual development seems to be reflected in the transformation of labour politics in China. Empirical research on China has generally pointed out the limitations of CSR and voluntary regulations in enhancing labour standards and promoting enabling rights, such as workplace representative mechanisms and collective bargaining (A. Chan, 2009; C. Chan, 2013a; Pun, 2005b; Sum and Pun, 2005; Yu, 2008). Pun (2005b: 113), for example, found that although 'the physical work and living environment' of the supplying factories has improved as a result of the CSR programmes, 'it has not led to workers receiving less miserable pay'. Santoro (2009) suggests that CSR will play a diminishing role in protecting workers' rights in the future, due to the poor administration and inadequate scope of voluntary codes. Rather than CSR, he predicts that the rise of trade unionism will be the primary response to the lack of labour rights for migrant workers.

Informed by these dynamic intellectual debates, this chapter evaluates the potential of and constraints to labour agency in the Pearl River Delta (PRD), the world's largest export processing zone (EPZ) (Lee, 1998; Pun, 2005a), and its ability to transform the regulatory framework in China from a regime based on individual labour rights to one based on collective rights. In the next section, the formation and nature of the individual rights-based legal framework will be reviewed.

Regulatory Regime for Labour in China: The Individual Rights-Based Framework

Since the economic reforms that started in 1978, the relationship between the state and the labour force in China has changed fundamentally due to the move to a market-dominant economy (Chiu and Frenkel, 2000; Cooke, 2005; Ng and Warner, 1998; O'Leary, 1998; Taylor et al., 2003; Warner, 1995). In urban China, work units (*danwei*) — a state institution that used to guarantee full and permanent employment and take full care of workers' welfare — began a gradual erosion in the early 1980s. They were finally dismantled in the mid-1990s

amid a wave of privatisation (Kuruvilla et al., 2011; Perry, 1997). In the rural areas, a household-based production contract system (*jiating lianchan chengbao zerenzhi*) was introduced in 1978 to release peasant workers from the collective labour of communes. The household registration (*hukou*) system which was introduced in 1958 to restrain the inflow of migrants to cities was also partially lifted. Rural residents are now allowed to move to the cities as soon as they can find a job. Most of these migrant peasant workers work for the export-oriented factories in the coastal areas, especially in the PRD, following the inflow of FDI to the region since 1978. This has given rise to the annual 'tidal wave of migrant workers' (*mingong chao*) first noted after the Spring Festival of 1987, when the media started to capture the image of millions of migrant workers flooding into the train station of Guangzhou, the capital city of Guangdong province (Lee, 1998). By the mid-1990s, both urban and peasant workers had to sell their labour in the capitalist labour market, thus encountering relations of labour vs capital that they had rarely experienced before (Cooke, 2005).

While China's economy is well integrated into global capitalism, trade unions in China do not perform the primary role of representing their members in the workplace, as their Western counterparts do (Clarke et al., 2004; Taylor and Li, 2007). For this reason, workers have only weak workplace bargaining power *vis-à-vis* the management (C. Chan, 2010; Lee, 2007); they have therefore become highly susceptible to capitalist exploitation (Chan, 2001; Pun, 2005a). Official statistics show that the gross domestic product (GDP) per capita in China has increased significantly and steadily, from RMB 5,046 in 1995 to RMB 10,542 in 2003 and RMB 29,748 in 2010 (*China Statistical Yearbook*, various years).[4] According to surveys by the National Statistics Bureau, the migrant workers' average monthly income was RMB 485 in 1995; it increased only modestly to RMB 690 in 2003 and jumped more significantly to RMB 1,690 in 2010 (Lu, 2012). It is obvious that although the situation has improved in recent years, for reasons which will be analysed below, the increase in workers' nominal income has lagged well behind the growth in GDP per capital.

This contradiction of high growth and low pay hints at increasing exploitation of migrant workers. It is against this background that a growing number of labour disputes and migrant workers' protests have emerged in China, bypassing the official trade unions. In an attempt to cope with this intensified labour unrest, greater weight has been attached to legal regulations in the reform period, compared to the Maoist era when the legal system was completely marginalised (Potter, 1999: 673). The first significant wave of strikes occurred in 1993–94

4 The exchange rate in January 2014 was 1 RMB (yuan) = US$ 0.17.

in foreign-owned enterprises (FOEs) in the PRD (Taylor et al., 2003). The government was forced to resort to labour regulations to deal with the workers' grievances. Li Bo Yong, the head of the Ministry of Labour, made the following comments about the situation in 1994:

The labour and employment conditions this year are very bad, and the number of labour conflict cases is rapidly increasing; last year, the number of strikes, work stoppages, collective administrative complaints (*shang fan*), petitions, marches and demonstrations was no lower than 10,000. Among them, foreign invested enterprises were most evident. …The Ministry of Labour is actively preparing legislation and setting up related policies. A series of regulations and policies will be announced. It is hoped that the above problems can be controlled or regulated to a large extent. (*Kuai Pao*, 14 March 1994; author's translation)

A Labour Law was produced in that year which laid down the foundations for workers' legal and contractual rights, a system for resolving labour disputes, and a collective contract and consultation process between trade unions and management. Other crucial pillars of the labour regulation regime include the Trade Union Law (1992) and the Arbitration Law (1995).

The legal regulatory regime established in this era has been conceptualised by Chen (2007) as an approach based on 'individual rights'. Chen refers to 'individual rights' as the legal accentuation of individuals' entitlement to a minimum wage, social insurance, an overtime premium and so forth, while workers' collective rights denote the right to organize, strike and engage in collective bargaining — rights which are basically absent in China. China has not yet ratified ILO Conventions No. 87 and No. 98 (covering freedom of association and collective bargaining): in fact, freedom of association is one of the most politically sensitive issues in China. The All-China Federation of Trade Unions (ACFTU) is the sole union federation in the country and it falls under the leadership of the Chinese Communist Party, as stipulated in its constitution and the Trade Union Law. The right to strike was removed as an amendment to the Constitution in 1982. It should be noted that, although the aforementioned laws do contain clauses related to the collective rights of workers, in practice these clauses are seldom implemented.

As soon as these laws were in place, they began to be used by workers as a weapon to protect their rights (Gallagher, 2005). The number of cases handled by the labour dispute arbitration committees at all levels in the country jumped dramatically, from 12,368 in 1993, to 135,206 in 2000 and to 684,379 in 2009 (see Table 1). However, the individual rights-based regulatory regime has proved insufficient to prevent labour conflicts, which have increasingly taken the form of collective resistance in China, especially since the early 2000s (Chan,

Table 1. Arbitrated Labour Disputes in China, 1993–2009

YEAR	ARBITRATED LABOUR DISPUTES	WORKERS INVOLVED IN ARBITRATED LABOUR DISPUTES	ARBITRATED COLLECTIVE LABOUR DISPUTES
1993	12,368	35,683	684
1994	19,098	77,794	1,482
1995	33,030	122,512	2,588
1996	47,951	189,120	3,150
1997	71,524	221,115	4,109
1998	93,649	358,531	6,767
1999	120,191	473,957	9,043
2000	135,206	422,617	8,247
2001	154,621	556,230	9,847
2002	184,116	608,396	11,024
2003	226,391	801,042	10,823
2004	260,471	764,981	19,241
2005	313,773	744195	16,217
2006	317,162	679,312	13,977
2007	350,182	653,472	12,784
2008	693,465	1,214,328	21,888
2009	684,379	1,016,922	13,779

2011; Chan and Pun, 2009; Lee, 2007; Leung and Pun, 2009; Su and He, 2010). Although official statistics on strikes and stoppages are not available, a number of indicators suggest a rising pattern of workers' struggles in the new millennium. One is the increasing number of arbitrated collective labour disputes shown in Table 1. While the total number of arbitrated disputes increased by 15 per cent in the period 2003–04, from 226,391 to 260,471, *collective* disputes in the same period skyrocketed by 77 per cent, from 10,823 to 19,242. Another indicator is data on the number of incidents of workers' collective action in the PRD in 2002–05, collected by a student/NGO activist, which show a trend of mounting labour protests (see Table 2).[5] Third, a veteran labour organizer in Guangzhou noted that, in 2005, around 50 per cent of the migrant workers she encountered

5 These data, including detailed sources and short descriptions, were gathered by Parry Leung, who worked in independent labour NGOs in Hong Kong and who has been researching labour conditions in the PRD since 2000. In an interview, he explained that the data were produced from his extensive scanning of NGO publications and media research using the search engine on the internet database, Wisenews. The author is indebted to Leung for the sharing of his research data.

Table 2. Workers' Collective Action reported in the PRD, 2002–2005

	2002	2003	2004	2005
Incidents reported	3	10	22	35
Incidents involving in excess of 1,000 workers	0	2	9	13
Incidents resulting in physical conflicts with police	0	2	7	12

had experience of strikes.[6] All of these illustrate that workers' grievances are increasingly being articulated in a collective form and that individual rights-based labour regulations have failed to contain labour unrest.

In response to this increasing labour unrest since 2004, the government has enacted three new laws: the Employment Promotion Law, the Labour Dispute Mediation and Arbitration Law, and the Labour Contract Law. The Employment Promotion Law aims to provide guidelines to local government at the county level on how to monitor employment agencies and facilitate the occupational and skill-based training of workers. The Labour Dispute Mediation and Arbitration Law simplifies the legal procedure for mediation and arbitration and reduces workers' economic and time costs. The Labour Contract Law is generally regarded as the most important of the three. In view of the widespread practice of employers evading their legal responsibilities by failing to give their workers written contracts, this law seeks to stabilise and regulate employment relations by making written contracts a legal obligation for employers. Workers are entitled to double pay if their employers do not sign a contract with them. Workers who have completed two consecutive contracts or been hired for ten years continuously, must be given permanent contracts. Moreover, the Labour Contract Law clearly states under what conditions employers may legally terminate or dissolve labour contracts, the procedures they must follow and what their legal responsibilities are if they fail to comply. Employers have to pay a severance compensation of one month's salary for each year of service if they want to dismiss a worker. Like their predecessors, these three new laws are also based on individual rights. For instance, the Labour Dispute Mediation and Arbitration Law tries to direct workers' grievances into the legal channel, thus pre-empting collective protests, while the Labour Contract Law seeks to strengthen workers' individual contract rights, rather than alleviate collective discontent through collective means.[7]

6 Author's fieldwork notes, June 2005.

7 Article 41 of the law requests that the employer consults the enterprise's trade union in the case of mass dismissal. However, there is no legal obligation for the employer to do so.

Having demonstrated how a framework based on individual labour rights has been established in the context of emerging labour conflicts, the next section will analyse the scope and limitations of labour agency in improving labour standards within this framework. It will begin by outlining the socio-economic background for rising labour agency in the past decade.

Labour Agency under an Individual Rights-based Framework: Opportunities and Constraints

The Socio-economic Background

Following Franzosi's (1995) analysis of the historical development of strikes in post-war Italy, migrant workers' struggles in China can be divided into two forms: proactive and defensive. The proactive struggles have taken place in times of economic boom when labour shortages have strengthened workers' confidence and encouraged them to demand better pay, benefits and labour rights (C. Chan, 2010). The defensive struggles refer to workers' actions to defend the status quo, such as their legal entitlements, when the state or capital attempts to lower labour costs in times of economic downturn. The migrant workers' protests in 2004–07 and after 2010 were proactive, while those which occurred during the economic slowdown in 2008 and 2009 were defensive in nature.[8] Our focus here is on the proactive category.

The sudden emergence of a labour shortage (*mingong huang*) in China, starting from 2004, has helped to breed collective and proactive labour activism (C. Chan, 2010). Surveys by the Guangdong Provincial Ministry of Labour and Social Security revealed that the province lacked 2 million 'skilled workers' (*Southern Daily*, 10 February 2004), with enterprises employing 13 per cent more migrant workers in 2004 than 2003 (*Southern Weekend*, 15 July 2007). Another survey suggested that the number of workers leaving rural villages to take up new jobs elsewhere increased by 3.8 per cent in 2004 (*Min Ying Jingjibao*, 8 May 2004). An official source also revealed that there was a shortage of 2.8 million workers across the whole country, including 1 million in the region of PRD and 300,000 in Shen Zhen (*Southern Weekend*, 9 September 2004; *USA Today*, 12 April 2005).

The reported phenomenon of 'labour shortage' was complicated, however, and was at odds with the existence of surplus labour in the rural areas (SCRO Project Team, 2006). It needs to be understood in the special Chinese context and does not mean an insufficient supply of workforce. In the Chinese global

8 See Hui and Chan (2012) for an elaboration of migrant workers' defensive struggles during the economic slowdown in China.

factories, managers usually prefer to recruit young workers aged between eighteen and twenty-six years old, especially women workers. As a result of the *hukou* system, women workers usually stay in their home villages to give birth and take care of their children after getting married in their mid-twenties. This has significantly reduced the supply of young female workers to the labour-intensive factories. This paradox has existed for years, but the one-child policy implemented since 1979 has further reduced the supply of workers in the new millennium (Lee, 2007). The improvement of the rural economy (driven especially by the campaign of the previous president, Hu Jintao, since 2003, to build the 'socialist new rural villages'), as well as the relocation of production to the inland and northern provinces, have also encouraged some potential migrants to stay in their home towns. Apart from the supply-side problem of declining numbers of young workers for the global factories in the coastal cities, on the demand side, the increasing job opportunities created by the FDI flooding into China after its entry to the World Trade Organization in 2001 was another major factor in the labour shortage (C. Chan, 2010).

Previous studies on strikes taking place between 2004 and 2007, during which China had high economic growth and labour shortages, have revealed that many strikes were led by people who had decided to leave the factory or had other job options. If strike settlements were not satisfactory, it was common for thousands of workers to resign; they would be employed shortly afterwards by other factories with equal or slightly better pay (C. Chan, 2010). Similarly, the new wave of proactive strikes in 2010 took place after China's recovery from the economic crisis of 2008, and after labour shortages had started to re-emerge in the third quarter of 2009. In the Honda case, which will be explored in detail below, the two leaders dismissed by the management during the strike had actually resigned before the strike began (*Asia Weekly*, 2010). Finding that it was not difficult to get alternative jobs with similar working conditions, workers tended to opt for 'voice' and/or 'exit' rather than 'loyalty' to their work organizations (C. Chan, 2010; Hirschman, 1970).

The changes in the labour market thus defined structurally the pattern of workplace labour conflict; however, as Coe and Jordhus-Lier (2011) suggest, actors, institutions and structures are constantly interacting with each other. A number of institutional and demographic factors also shaped the transformation of labour relations in the past decade. First, the new generation of migrant workers who have grown up after 1979 are better educated and have greater aspirations to stay in the cities. They are more vocal and confident about challenging unfair practices in their factories, as Pun and Lu (2010) have pointed out. Second, the local state, especially in the PRD, has become more tolerant of wildcat strikes, often deploying

softer state power to deal with workers' strikes (Su and He, 2010). Third, due to the privatisation of state-owned enterprises (SOEs) and the emergence of protests outside of trade unions in FOEs, the ACFTU launched a campaign to unionise migrant workers in FOEs where labour conflict is most prevalent (Pringle, 2011). ACFTU's enterprise affiliates have increased in number from 1,324,000 in 2006 to 1,845,000 in 2009 (*China Labour Statistical Yearbook*, 2007, 2010). This has created opportunities to raise workers' awareness of the importance of making official trade unions accountable. Fourth, labour NGOs (especially those in the PRD) have played a supportive role in nurturing awareness of the law among migrant workers (Chan, 2013b; Cheng et al., 2012; Froissart, 2011). Workers' legal knowledge and consciousness have also been strengthened by the legalistic 'rights' discourse and propaganda of the party-state and the official media (Lee, 2007).

The Opportunities for Labour Agency

The year 2010 was marked by vigorous labour activism in China. Two remarkable outbreaks of protest occurred: first, the series of workers' suicides in Foxconn; and second, the wave of strikes led by Honda workers. The former signified workers' passive individual resistance while the latter represented a proactive collective struggle. The Western media widely reported these two stories by highlighting the rising labour costs in China, alleging it was 'the end of cheap Chinese labour' (see, e.g., *The Observer*, 4 July 2010; *The Economist*, 31 July – 6 August 2010). Indeed, in June 2010, the striking workers at Honda won pay rises of between 32.4 per cent and 70 per cent. This forced the government to increase significantly the minimum wage rate. In Guangdong province (with the exception of the Shenzhen SEZ in which the minimum rate was decided by the city government), the minimum wage rate had been adjusted biennially since 2004 by the provincial government and less frequently before that.[9] In May 2010, the provincial government increased the monthly minimum wage from RMB 770 to RMB 920 for the cities including Foshan, where the Honda strike took place. After the wave of strikes led by Honda, the provincial government announced another adjustment to RMB 1,100 in January 2011, effective from March 2011. That means in total a 42 per cent rise in ten months (*Yangcheng Wanbao*, 20 January 2011; *Xinhua Net*, 18 March 2010). The government of Shenzhen, where the Foxconn factory is located, announced an increase in the city's minimum wage from RMB 900 to RMB 1,100 a few days after Foxconn had announced

9 As a part of the individual rights-based framework, the Ministry of Labour issued the 'Enterprise Minimum Wage Regulation' in 1993, giving local governments the autonomy to formulate their own legal minimum wage. This policy was also included in the Labour Law in 1994.

Table 3. The Level of the Legal Minimum Wage in Shenzhen SEZ

YEAR	MINIMUM WAGE (RMB)	PERCENTAGE INCREASE
2001–02	574	
2002–03	594	3.5%
2003–04	600	1.0%
2004–05	610	1.7%
2005–06	690	13.1%
2006–07	810	17.4%
2007–08	850	4.9%
2008–09	1,000	17.6%
2009–10	1,000	0%
2010–11	1,100	10%

Table 4. National Inflation Rates

YEAR	INFLATION RATE
2005	1.8%
2006	1.5%
2007	4.8%
2008	5.9%
2009	-0.7%

wage adjustments twice in one week, increasing workers' basic monthly salaries from RMB 900 to RMB 2,000 (*Oriental Morning Post*, 8 June 2010; *Shenzhen Commercial Daily*, 9 June 2010).

Table 3 shows the change in the minimum wage in the Shenzhen Special Economic Zone since 2001. Although the minimum wage has been adjusted almost annually in the SEZ, it is only since 2005 that it has increased significantly. This reflects the two sources of pressure on local governments discussed above: the 'shortage of labour' and the wave of strikes.[10] Since 2005, the minimum wage increases have generally been higher than inflation (see Table 4 for the national inflation rates), signifying a possible escalation in real wage levels.

10 See C. Chan (2010: Ch. 4 and Ch. 5) for a detailed elaboration of this point. In other East Asian newly industrialised countries (NICs), namely Hong Kong, Taiwan and Korea, the phenomena of a 'shortage of labour', spontaneous strikes and rising wages all occurred in the 1970s when these economies experienced a similar period of export-oriented industrial growth (see Deyo, 1989).

Constraints on Labour Agency

Despite the rising minimum wage, however, the income of employees (*zhi yuan*[11]) as a share of GDP in China has declined dramatically since 1978 and, although it has begun to increase recently, the increase is not at a significant level (see Table 5). In 1980, a peak of 16.99 per cent was reached; it then decreased to 10.74 per cent in 2000 before rising slightly to 11.21 per cent in 2008.

In other words, workers are still enjoying only a small proportion of the fruits of economic development. This is the result of a number of factors. First, a rise in the minimum wage does not guarantee a wage adjustment for those already earning more than the minimum wage. Moreover, workers' gains through collective protests may not be sustained. After a strike, the leaders may be dismissed or have to resign from the factory. Even when a strike is successful in forcing management to raise wages, there is no guarantee that wages will be increased again in subsequent years, or that a similar strike will not be required in the near future. Only if a collective bargaining mechanism is institutionalised, can a positive impact on labour standards be achieved and the structural power imbalance between management and workers changed.

Furthermore, wage gains through labour activism have also been handicapped by the competition between different local state authorities (Lee, 2007). At the end of June 2010, several days after Foxconn announced a pay rise in Shenzhen, the company was reported to be planning a relocation from Shenzhen to the inner province of Henan, where the minimum wage ranged from RMB 600 to RMB 800 in 2010 (*United Morning Post*, 29 June 2010). The report also stated that the city government in Henan would grant Foxconn workers a lump sum subsidy of more than RMB 600 for the first six months, indicating that local

Table 5. Employees' (Zhi Gong) Wages as a Share of GDP

YEAR	GDP (RMB 100 MILLION)	ZHI GONG'S TOTAL WAGES (RMB 100 MILLION)	WAGES AS PERCENTAGE OF GDP
1978	3,645.2	568.9	15.61%
1980	4,545.6	772.4	16.99%
1990	18,667.8	2,951.1	15.81%
2000	99,214.6	10,656.2	10.74%
2005	183,217.5	19,789.9	10.80%
2008	300,670.0	337,13l.8	11.21%

11 Zhi yuan does not cover all of the migrant workers in the country. It has a complicated definition in government statistics, referring to wage labourers in SOEs, collective-owned enterprises, joint ventures, shareholders' companies, FOEs and other institutions. However, the figures do give us a hint about historical changes in workers' wage share.

government was playing an active role in facilitating the relocation. The company planned to employ 300,000 workers in Henan. To help the electronics giant recruit sufficient numbers of staff and to tackle the challenge of the 'labour shortage', the Education Department of Henan's provincial government issued an 'urgent notice on organizing middle-level vocational school students to do placements at Foxconn', in September 2010. According to its official report, 25,000 students from over 100 schools in the province had been mobilized to work in Foxconn by October of that year (*Beijing Youth Daily*, 12 October 2010).[12]

In short, labour activism — together with other factors — has forced the local state to raise the minimum wage rate, and global capital to increase wages under the current individual rights-based legal framework, but it has not dramatically changed workers' structurally low share of GDP or their level of empowerment. The next section examines how labour activism is acting as a crucial driving force behind the emerging collective rights-based regulatory regime, and the consequences of this, by looking in detail at the case of the Honda workers' strike.

Towards a Legal Framework Based on Collective Interests: Challenges Posed by Labour Activism

The strike in question was staged by workers at the Honda Auto Parts Manufacturing Co. Ltd (CHAM), which specialises in car transmission production and is located in Foshan in Guangdong province.[13] The Honda strike was not an isolated case: it was part of a wave of strikes across China. *Asia Weekly* (2010), a Hong Kong based Chinese magazine, listed eighteen strikes around the country from 29 April to 1 June 2010. A Japanese survey reported on the BBC's Chinese web (30 July 2010) also revealed that strikes had taken place in at least forty-three factories in the country in the two months from mid-May to mid-July 2010.

The CHAM strike began on 17 May 2010, involved about 1,800 workers and lasted for seventeen days. It was played out in the context of rapid expansion of the Chinese car industry in the wake of the global economic crisis. Due to the stimulation policies of the government, including sales tax reduction and

12 The increasing use of 'student workers' in light industrial factories has been a new phenomenon since the Labour Contract Law and Employment Promotion Law were enforced in 2008 (Chan and Zhai, 2013). In the case of Honda, around 80 per cent of workers at the time of the strike were student interns, whose wages and working conditions were not protected by labour law. In some of Foxconn's factories, student interns constitute more than 30 per cent of the total workforce (information shared by a student researcher who did fieldwork in Foxconn).

13 See Chan and Hui (2012) for a more detailed elaboration of this case.

purchase subsidies, the automotive industry had experienced its greatest expansion in 2009, with a sales increase of 42.1 per cent (*Xinhua net*, 21 January 2010). However, the basic salaries of most auto workers had not been adjusted accordingly. In a group interview, a worker told me: 'Our wages have only increased by less than 100 yuan in the past three years, but the workload has increased heavily, especially in 2009… For some positions, workers have to finish one process in 50 seconds. It's very tiring and we can't tolerate it any longer'.[14]

All the workers at CHAM had been recruited from a small number of technical schools (*jixiao*) through an internship system. It is normal for final-year students at technical schools to do a one-year internship with an industrial organization: after they have graduated, CHAM offers its interns formal employment status. At the time of the strike, according to workers, around 80 per cent of CHAM workers were interns and the other 20 per cent were formal employees. The strikers listed 108 demands, but consistently named two of them as the major issues: a wage increase of RMB 800 for all workers; and a democratic reform of the trade unions, as the existing trade unions did little to represent their interests. Workers felt that, throughout the strike, the enterprise trade union was not on their side. One worker noted: 'The chairperson of the trade union tried to talk workers into resuming their work. And he maintained a close communication with the CEO of the company alongside his first meeting with workers' representatives on 24 May. He is deputy head of the Business Management Department (*shiye guanli bu*) and he earns more than 10,000 yuan a month'.[15]

The firm was at first reluctant to negotiate with the workers at all; instead it tried intimidation. On 22 May the company 'fired' two activists who had already resigned. A worker told me: 'These two strike leaders actually had resigned before the strike began. The company fired them and announced the news through amplifiers so that workers in every corner of the factory would not miss it. It is to "kill the chickens to frighten the monkeys" [*sha ji jing hou*], punishing someone as a warning to others not to continue with the strike'.[16] On 24 May, the company proposed to increase the monthly 'living subsidy' of workers from RMB 65 to RMB 120, but made no upward adjustment of wages. On 26 May, the company put forward another proposal, which was to increase wages of interns and formal workers by RMB 477 and RMB 355 respectively. Workers turned down both proposals, which still fell far short of the demanded wage increase of RMB 800.

14 Interview, Honda workers, 30 May 2010.
15 Interview, Honda workers, 30 May 2010.
16 Interview, Honda workers, 30 May 2010.

Monday 31 May 2010 was a turning point for the strike. On that day, many workers resumed work under pressure from the local government representative and the teachers of the student interns, who threatened not to give striking interns their graduation certificates. However, about forty formal workers refused to return to work and gathered together in the open space of the factory premises. I had interviewed some of these workers the previous evening. They told me that as most of the interns would return to work, it was highly likely that the minority who continued to strike would be dismissed. A male worker, aged twenty-six, told me: 'I don't care if I am fired. It is meaningless [*mei yisi*] to work in this factory. We can get a job with similar pay as soon as we leave the factory gate.'[17]

At around 2 pm in the afternoon, one of the interviewees sent me a text message saying: 'members of the district trade union started beating strikers and it was a chaotic situation!'. Workers noted that around 200 people entered the factory complex to 'persuade' the strikers to resume work. When the persuasion failed, a physical conflict ensued and a few of the strikers were hurt. This attracted massive attention from both local and international media, with one Hong Kong newspaper using the headline 'Trade union beat up workers' (*gonghui da ren*) (*Mingpao*, 1 June 2010). Official sources did not reveal where the 200 'trade unionists', who wore yellow caps and carried 'trade union membership cards' (*gonghui huiyuan zheng*), had come from, but reliable sources revealed that they were in fact locals from other villages.[18]

After this incident, CHAM and the trade unions came under serious pressure. Workers walked out in support of their workmates who had been injured. The factory-wide strike continued. On 1 June, Zeng Qing Hong, the CEO of Guangqi Honda Automobile Co. Ltd, a joint-venture between Honda and a Chinese SOE in Guangzhou, who is also a member of the National People's Congress, went to talk to the strikers, who were furious and refusing to talk to the Japanese management. Zeng asked the strikers to elect their own representatives and promised to negotiate with them three days later. In the presence of Zeng, some of the strikers elected sixteen representatives. At 5 pm the same day, the Nanhai District Federation of Trade Unions and the Shishan Town Federation of Trade Unions issued a letter of apology to all CHAM workers.

Endeavouring to gain wider public support and calling for stronger solidarity among workers, the workers' representatives issued an open letter to all CHAM workers and to the public on 3 June, reiterating their demands: (1) a wage

17 Interview, Honda workers, 30 May 2010.

18 Information provided to the author via telephone and internet communications with a number of strike leaders, June 2011.

increase of RMB 800; (2) a seniority subsidy; (3) a better promotion system; and (4) a democratic reform of the enterprise trade union. Part of the letter read as follows:

> We urge the company to start serious negotiation with us…. It earns over 1,000 million yuan every year and this is the fruits of our hard work… our struggle is not only for the sake of 1,800 workers at CHAM, it is also for the wider interests of workers in our country. We want to be an exemplary case of workers safeguarding their rights.[19]

After the open letter was released on 3 June, workers' representatives received over 500 text messages of support from people all over China. Below are two examples:[20]

> 'You not only represent CHAM's workers, but also the 100 million-strong working class under oppression in China…. All the people in the country are supporting you and paying great attention to your just action. Your glorious action will be recorded as part of modern Chinese history'.
>
> 'I am a manual worker in another Honda factory. Your strike has set a good example of Chinese workers furthering their legitimate interests. You are fighting not only for your own interest, but also that of all Chinese people. As a manual worker, I fully support you'.

In a pre-negotiation meeting with Zeng on 3 June, the workers' representatives requested a democratic and formal election of workers' representatives to be held as soon as possible. The same evening, the company initiated a democratic election in all departments and thirty representatives were elected. The same day, with outside help, workers' representatives got in touch with Chang Kai, a prominent labour law professor from Remin University in Beijing, who later agreed to be their advisor. On 4 June, negotiations began, with the newly elected workers' representatives, representatives from the company, the labour bureau, the local government, the legal advisor to the workers, the chairperson of the enterprise trade union and Zeng himself. At the end of it, the two parties reached an agreement that workers' wages would be increased by 32.4 per cent from RMB 1,544 to RMB 2,044, and interns' wages would be raised by 70 per cent from around RMB 900 to around RMB 1,500. The company refused to talk about the workers' demand for democratic reform of the enterprise trade union, giving the excuse that it could not intervene in matters concerning workers' associations.

19 Copy of open letter given to the author by workers' representatives.

20 The author's translation. The messages were shared by one of the key workers' representatives.

During the strike, the *New York Times* (11 June 2010) wrongly reported that the workers were demanding an 'independent' trade union while in fact they had asked for reform of the existing enterprise trade union committee. There was no sign that the party-state would allow the existence of independent trade unionism. In late June 2010, officials from the Guangdong Federation of Trade Unions (GDFTU) met CHAM workers' representatives. Although they promised trade union reform and collective wage bargaining, the GDFTU delegates overruled the call of the workers' representatives to remove the existing trade union chair.[21] Trade union elections were subsequently organized at the level of *Ban (*division), *Ke* (department) and *Chan* (factory) between September and November 2010, with GDFTU's active participation.[22] There are seven departments in CHAM, each consisting of four or five divisions. At the first stage of the trade union reorganization, workers in each division elected their own division leader (*gonghui xiaozu daibiao*). At the second stage, enterprise trade union branches were set up on a departmental basis and elections were held to elect one branch chair and two committee members, voted for by all workers. The workers' direct participation in the trade union elections ended at this stage and only the elected representatives from each trade union branch had the right to nominate candidates and vote for the twelve enterprise trade union officials. By manipulating the list of candidates and isolating active workers' representatives who had had close contact with civil society during the strike,[23] the higher lever trade unions managed to ensure that most of the enterprise trade union officials elected came from managerial or supervisory levels. While the union chair remained unchanged, two deputy chairs were elected in February 2011, one a department head, the other a vice head.

Alongside the trade union reform, there has also been progress regarding collective bargaining, with GDFTU taking a leading role. From 25 February to 1 March 2011, wage negotiations took place between the trade union and the management of CHAM. The former demanded a wage rise of RMB 880 for production workers — a 46.1 per cent increase according to the company. Rejecting the trade union's demand, the management proposed a 27.7 per cent increase (RMB 531), saying that the union's demand was too aggressive.

21 Interview with a strike representative, 4 July 2010.

22 The information on the trade union election in CHAM was provided by a worker during an interview conducted on 12 June 2011, and supplemented by a newspaper report (Southern Metropolitan Daily, 4 July 2011).

23 According to workers (interview, 4 July 2010), the management had talked to some strike representatives after the strike was settled, so as to gain direct or indirect influence over them. Also, at least one key workers' leader was ordered by high-ranking trade union officials not to maintain any outside contact with civil society.

A stalemate occurred and neither party would compromise. Kong Xianghong, Deputy Chair of GDFTU, who was deeply involved in Honda workplace issues, played a key role in driving both parties to reach an agreement. In the end, a pay rise of RMB 611 was agreed upon. One provincial newspaper (*Southern Metropolitan Daily*, 13 March 2011) reported the following: 'The stalemate was broken by the Deputy Chair of the provincial ACFTU Kong Xianghong who rejected any "final" proposal by one side and demanded that both the management and the union used maximum respect to reach a consensus'.

Since 2011, annual collective bargaining has been held between the workplace trade union and the management, facilitated by the higher level trade union. The Honda workers were basically satisfied with the pay rises in 2011 and 2012, but a dispute arose in 2013 as the company's offer was far lower than the rank-and-file workers had expected. A strike took place, though it was opposed by the official trade union committee. The company finally agreed to a pay rise higher than its original offer, but both the trade union committee and the management exerted considerable pressure on the workers who had led the strike.

The 2010 Honda workers' strike was seen as representing a new stage of labour resistance in China. This was not only because of its success, but also its duration (seventeen days) and the level of organization compared to other strikes that had occurred previously (Chan and Pun, 2009; Chen, 2010; Su and He, 2010). Equally important, the strikers went beyond the individual interest of a pay rise in calling for democratic trade union reform. It is also worth noting the knock-on effect of the strike on the car industry, as well as other industries. Auto workers from many car companies and suppliers have followed the example of their Honda counterparts and gone on strike to demand higher wages. Almost at the same time as the Honda strike, workers from a supplier to Hyundai in Beijing had also launched a strike demanding salary increases. Shortly after the Honda strike in Foshan, workers from another Honda factory in nearby Zhongshan staged a strike demanding higher wages and reform of the enterprise trade union. Workers from two Toyota factories in Tianjin, Atsumitec Co. (a supplier to Honda) and Ormon (a supplier to Honda, Ford and BWM), followed these examples and went on strike in June and July 2010. The ripple effect is demonstrated by the fact that a leader of the Zhongshan Honda strike contacted workers' representatives from CHAM, seeking their advice.

This wave of nationwide strikes served to warn the government once again about the growing labour discontent, increasingly leading to collective strikes. More importantly, they acted as a signal that the current individual rights-based regulatory regime is inadequate for dealing with workers' grievances. Hence, following the Honda workers' strike, central and local governments have sought

to push forward labour regulations based on collective interests, while the reform of the trade unions on the basis of the existing legal framework, and the establishment of a better collective consultation system in the workplace, have risen to the top of the agenda of both the ACFTU and the government.

On 5 June 2010, the ACFTU issued the document 'Further strengthen the building of workplace trade unions and give them full play' (ACFTU, 2010), which advocated the election of workplace trade unions in accordance with legal regulations and specified the role of workplace trade unions in ensuring the effective implementation of the Labour Law, the Trade Union Law, and the Labour Contract Law in enterprises. It also emphasised workers' right to information, participation and the voicing of opinions, as well as the right of workplace trade unions to monitor management. Thirteen provinces had already issued documents in the name of the Chinese Communist Party committee or local government to promote a collective wage consultation shortly after the Honda strike (*China Youth Daily*, 9 June 2010). The Guangdong provincial government began debating the second draft of the Regulations on the Democratic Management of Enterprises in August 2010, while the Shenzhen Collective Consultation Ordinance (amended draft) was also under public consultation (*Guangdong China News*, 5 August 2010; *Hong Kong Commercial Daily*, 30 September 2010).[24]

However, some overseas chambers of commerce were strongly opposed to legislation on collective negotiation. In Hong Kong, over forty business associations published petitions in newspapers, while some of their representatives paid official visits to the Guangdong government to voice their opposition (*Singtao News*, 27 September 2010). Chambers of commerce from the US also voiced concerns about the legislation.[25] As a consequence, the Regulations on the Democratic Management of Enterprises and the Shenzhen Collective Consultation Ordinance were both suspended (*Wenwei Po*, 18 September 2010).

In sum, the wave of strikes led by Honda workers exerted historical pressure on the party-state and the ACFTU to promote a collective rights-based framework of industrial relations (Chan and Hui, 2013). However, the move towards legislating for collective bargaining has been stopped due to opposition

24 In 2008, the governments of Guangdong province and Shenzhen city started to consider local regulations on democratic management or collective bargaining. The legislation plan was halted by the financial crisis of 2008. In 2010, the wave of strikes ignited by the Honda case forced the governments to put the legislation on the table again (Chan and Hui, 2013).

25 Interview with an official from the American Chamber of Commerce in Guangzhou (7 June 2011).

from overseas chambers of commerce; the future of collective rights in CHAM — whose workers have exercised a high degree of 'agency' — also remains uncertain. These developments bring to mind Coe and Jordhus-Lier's (2011: 228) concept of 'constrained labour agency': '[A] more sophisticated understanding of the structural constraints and social relations that shape labour's agency potential is required. Notwithstanding the significance of the efforts to "reclaim" labour agency from the grip of capital, we want to encourage the re-embedded understanding of this concept'.

The agency of Chinese migrant workers is embedded in the context of post-socialism as well as global capitalism. The power of global capital in influencing Chinese labour policies has been demonstrated in its lobbying against collective bargaining legislation. The Honda case provides further evidence for the argument of Chen and Sil (2006) and Clarke (2005) — that the weakness of Chinese trade unionism is structurally rooted in the legacy of state socialism. For Clarke (2005: 16), the promotion of collective consultation/bargaining in both China and Russia is 'a means by which the trade unions are able to secure the reproduction of the political and administrative role that they had enjoyed under state socialism'. Chen and Sil (2006: 82) find that the stronger dependence of the ACFTU on the party in communist China has rendered Chinese labour weaker than its Russian counterpart in terms of its challenges to the state and to business. Their argument on the structural limitations of post-socialist trade unionism is well made, although it neglects the power of labour agency in challenging the institutions, which this chapter has demonstrated.

Conclusion

From the discussion above, we can see that workers' activism in China's PRD enhanced wages and working conditions by pushing the local government to increase the minimum wage rate, the government to legislate an individual rights-based legal framework, and global capital to raise the wage level. However, limitations associated with this individual rights-based regulatory regime led to a decline in labour's share of GDP and an emerging pattern of labour unrest in the region. In this context, a new wave of workers' strikes in 2010 forced the government to seriously consider a collective rights-based regulatory framework, but the prospect for this has been handicapped by the state's manipulation of trade unions and by opposition from business. The regulatory regime for labour is now at a crossroad. On the one hand, the individual rights-based legal framework has proven ineffective at coping with escalating labour discontent expressed through collective actions; on the other hand, the attempt to transform the existing legal

framework into a collective rights-based regime faces huge uncertainties and difficulties.

The implications from this research are twofold. First, as one of the key players, Chinese migrant workers have been actively participating in the shaping and reshaping of labour standards in the global factories. While highlighting the possibility of labour activism to challenge global capital and the party-state regarding labour regulations, the political and economic constraints on labour agency should not be underestimated. Politically, the authoritarian nature of the Chinese party-state and the legacy of socialist trade unionism have structurally impeded the rise of effective trade unionism, as Clarke (2005) and Chen and Sil (2006) have rightly pointed out. Economically, China's heavy dependency on FDI and export-oriented industry has granted global capital huge leverage in influencing local labour policies. This dilemma is well captured by the concept of 'constrained labour agency', which highlights the interplay of structures, institutions and agency in shaping labour relations in global capitalism (Coe and Jordhus-Lier, 2011).

The second implication is that, in the process of integrating into the global economy, the Chinese state is playing a significant role in balancing the interests of and pressures from both labour and capital, while maintaining its ruling authority (Weiss, 1998). State regulations and the state's relations with labour and capital are key to analysing and predicting further developments in labour standards and industrial relations in China. Special attention should be paid to the regional or local party-state (Edwards and Elger, 1999), which has played an important role in implementing and setting labour standards (Lee, 2007), as demonstrated by Foxconn's relocation to Henan province and the role of GDFTU in influencing wage levels in CHAM.

Arguing for the essential role of state and labour agency in the shaping of labour standards in China, this chapter echoes critiques of the firm-centred approach in development studies (e.g. Bair, 2005; Gibbon et al., 2008; Werner, 2012). More empirical studies on the state and labour relationship in different geographic areas of China and other developing countries will now be invaluable.

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CHAPTER TWO

Labour Activism under the 'New Normal' in China

by APO LEONG

'*Silence only make people feel numb!*
Resistance will earn dignity!'
Zhou, an ex-migrant worker
(Southern Metropolis Daily, 2013)

Introduction

In 1925, the All-China Federation of Trade Unions (ACFTU) was founded in the midst of a turbulent Chinese labour movement as a product of the second National Labour Congress held in Guangzhou. Its concluding resolution reiterated that every economic struggle is simultaneously a political one. Moreover, Chinese workers should strive for more wages and less working hours, universal suffrage, the rights to assembly and association, freedom of speech, freedom of the press, and the right to strike (ACFTU, 1957; Barker et.al., 2014; Xian, 2014). Soon thereafter the ACFTU was severely weakened after the merciless massacre by the Kuomintang regime in 1927. Ninety years have passed, but Chinese workers have yet to earn their above-mentioned rights despite the fact that they are now living in a socialist China. Their representation is decreasing at all decision-making and consultative levels,

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and their social status is lower despite the party's rhetoric that still glorifies them as the 'leading force' (Ching, 2012; Perry, 2012; Lee and Yang, 2007; Aspects of India's Economy, 2014).

Presently, the ACFTU is the largest union in the world, representing more than 280 million members with a declared rate of organized workers at more than 80 per cent (Xian, 2014). In spite of these impressive figures, most workers in China view the performance of the ACFTU as a welfare organization, providing gifts or relief, or as a government department or a management arm, or a party tool to do as it is told. Some ACFTU branches exist only on paper, without recognition from the workers. As a result, while trade unions at different levels serve as a 'bridge and link between the party and grassroots union,' the 'bridges and links' are broken,[1] for the ACFTU has played an insignificant role in defending workers' rights, apart from formulating labour legislation or policy (HKCTU, 2013).[2] For migrant workers, the ACFTU is too remote for them.

On the other hand, there has been an ongoing upsurge of labour disputes in recent years that have been mostly initiated by the grassroots workers themselves without the blessing or the support of the ACFTU and local trade unions. This type of worker activism has become a daily event and a common way for workers to respond to China's unbalanced labour relations and its violation of labour rights that are prescribed by the laws and regulations of the State. The jargon 'New Normal' was originally used by the government to justify the lowering of the country's economic growth in the near future to not more than seven per cent, telling China's people indirectly that they have to prepare themselves for the rainy days ahead (SSAP, 2015). In response, the collective actions of China's workers have also developed a 'new normal'. This chapter discusses this new phenomenon through recent cases and analyses the various forces in the field, particularly the role of labour NGOs in China.

Here, There and Everywhere

Although there are no official statistics on strikes available to the public, certainly the number is growing year by year. The number of cases of labour disputes in 2012 was 641,202 according to official statistics (China Annual Statistics Report, 2013). Among this figure, there were 7,252 collective labour disputes. In addition, the number of labour disputes has increased from 48,121 in 1996 to more than 600,000 in 2008. In 2012, almost 900,000 workers were involved in labour disputes. What is also encouraging is that the pattern of China's

1 Interview, a labour law professor in China, Beijing, 2 September 2016.

2 This was also discussed during the International Conference on Collective Bargaining and Empowerment of Workers in China, held in Hong Kong, 2014.

labour disputes and resistance have transformed from fighting for individual rights to collective rights, as brilliantly demonstrated by the 2010 Honda strike in Foshan in Guangdong Province where workers earned a large increase in wages and demanded union reforms (Chan and Hui, 2013). Moreover, workers are experiencing new and innovative ways of protest in both organizing and demands.

The other significant feature is that Chinese workers do not want to play the role of passive victims any longer. They are now willing to take the initiative, as demonstrated by the growth of the second generation of migrant workers (Southern Metropolis Daily, 2013; Pai, 2012; Bureau of Migrant Population, 2014; Ren, 2013). These direct actions embolden their confidence and have generated a new generation of organizers or leaders to take further actions in other issues, such as the security guards in Guangzhou Meng Han, Shenzhen furniture maker Wu Guijun and many others. Furthermore, they are now familiar with the power of the new tools of social media for sharing information and communication.[3]

Recurrent Case of Worker Activism

Yue Yuen is a typical Asia transnational corporate model. The 2013 strike shows that workers were bargaining by informal organizing and undertaking collective action. Information has been collected by interviewing a group of workers from Yue Yuen in Dongguan, Guangdong Province. Yue Yuen is a supplier of Western brands, including Timberland, Adidas, Puma, New Balance, Converse, etc. It is a giant company listed on the Hong Kong Stock Exchange and is a subsidiary of Pou Chen Corp., which is listed on the Taiwan Stock Exchange. The annual production volume of shoes in 2013 was 313 million pairs. Its turnover in 2013 was around US$ 7.6 billion with nearly 70 per cent of this figure stemming from the production of footwear. In terms of regions, 20 per cent of its turnover was in the United States, 20 per cent in Europe and 44 per cent in Asia. The company has 413,000 employees. The major business of Yue Yuen is retail sales, brand licensee and domestic brand manufacturing, which constitutes 60 per cent of its business through Pou Sheng International, which is a daughter company of Yue Yuen that focuses in particular on businesses in China. Regarding footwear manufacturing, which is another major business of Yue Yuen, it has shoe factories in various Asian countries, including Vietnam, Indonesia, China, Bangladesh, and Cambodia. Most of the production volume is in the manufacturing factories of Vietnam, Indonesia, and China. The production of shoes in China spreads over different parts of the country in Dongguan in Guangdong, Jiangxi, and Hubei.

3 Interview, a labour law professor in China, Beijing, 2 September 2016.

The manufacturing factory, which had more than 40,000 workers participating in the strike, is located in Gaobu Town of Dongguan. It was set up in 1998, and hence, there are many first generation workers who started to work in the factory in the 1980s and who worked there for more than 10 years. The employees in the factory are around 48,000. The industrial zone is divided into different factory buildings, named by numbers – No. 1, New 3, Old 3, No. 6, No. 8, etc. The number of women workers is higher than that of male workers. Every month a worker in the factory normally earns 2,400 yuan to 3,000 yuan, which is US$ 400 to US$ 500, according to interviewed workers, while the minimum salary in Dongguan was 1,310 yuan, or US$ 218 in 2013 and the average salary is 3,572.50 yuan—around US$ 600.

The triggering incident of the strike was social insurance. The Social Insurance Law was enacted in 2011, covering pensions, unemployment, maternity leave, injuries in the workplace, and medical benefits. Workers, whether they are migrants or not, are entitled to these benefits as well as the housing fund. The comprehensive scheme is called 'Five Insurance and One Fund.' Particularly in Dongguan, employers in 2014 contributed 11 per cent of the worker's salary to their employee's pension, and the worker provided 8 per cent. Regarding the housing fund, it is more flexible as the contributions of the employer and employee can range from 5 per cent to 20 per cent.

The Yue Yuen strike started on April 3, 2014. One month earlier, in late February to the middle of March, another toy factory in Dongguan called Sanda Kan Industrial Ltd. which is a company owned by the Hong Kong-based Kadar Group, saw workers go on strike. Information and leaflets of the Sanda Kan factory circulated in the Yue Yuen factory in Dongguan. Workers and low level management began to check their insurance records in the local Social Security Bureau. The emotion of workers was growing. At the same time, there was a rumour circulating among the workers that the Yue Yuen factory in Dongguan would be shut down in 2015.

The strike was then initiated. Four hundred workers from Building No. 3 in the factory and some of the mid-level managers had begun the strike, asking the company to pay back the insurance premium they were owed. On April 4, worker leaders decided that the demands of the strike should be expanded to also include asking the company to pay the premium of the pension and housing fund that was also owed, including the contribution of workers, to increase wages to at least 500 yuan (US$ 83), and to improve management by negotiating regulations with worker leaders. On the next day, April 5, thousands of workers from Buildings No. 1, 3, and 8 started obstruction of the Gaobu Bridge, an important transport link in Dongguan, for around four hours. The government

agreed to reply to the workers before April 14. However, by the time the deadline arrived, the government had not yet responded to the workers. On that morning, the workers went on strike for a second time. The company issued a notice threatening that the striking workers may be dismissed without economic compensation. One day later almost all the workers in the factories participated in the strike. The employers responded with further threats to induce workers to return to work and by providing subsidies to those workers who did so. Many workers punched in but stopped working.

Meanwhile, the official trade union and government departments, including the police, intervened in the strike by different means. In addition, more NGOs on the mainland and in Hong Kong took part in the incident in various ways. Yue Yuen said it would pay back the premium according to the law regarding pensions and the housing fund, but workers would have to pay a lump sum of their contribution as well. Secondly, from May 1, the company would gradually increase the amount of premium it would pay until the end of the year. In the meantime, the employees had to pay a higher rate. The company declared that workers who were on strike from April 14 to April 17 would not be punished.

The strike continued, however. On April 21, the company agreed to give every worker an extra living subsidy of 230 yuan (US$ 38) and asked workers to go back to work. After that, the Dongguan trade union, under the ACFTU, issued a notice saying that from the responses of the company they observed the sincerity of management and asked workers to return to work. The trade unions at the city, town, and enterprise levels collected and consulted the views of workers. Workers started to have internal disagreements. Some of them thought that workers should continue the strike and asked Yue Yuen to pay the full social insurance premium, including the portion that workers had not paid. Some of the workers though wanted to go back to work. At the same time, the police entered the industrial area of Yue Yuen and threatened the workers to induce them to work. By April 29, the strike had basically ended, and all the workers had returned to work.

This strike—the biggest strike in China in the last decade—has amazed the world! Although the working conditions and rule of law have not developed as fast as the economy, the power of workers is strong even though there is no independent trade union in mainland China. There were a number of grievances that caused the workers to strike, with the major demand being that employers have to pay back the money the workers were owed for their social insurance and housing fund. The employers violated the social insurance law in China by only paying the social insurance of workers in accordance with the minimum wage as temporary workers, and even this sum was not paid. In total, there was

200 million yuan (US$ 33.3 million) that the workers were owed, and this breach of the employers' financial responsibility was at least implicitly approved by the local authorities, if not explicitly.

Other reasons that helped the mobilization of the strike includes wages that were lower than that paid to workers at nearby factories, no legally enforceable contracts, poor management, a poor occupational safety and health record, and the working environment. Surprisingly, unlike the Honda strike in 2010, there were no demands for an autonomous election of trade unions and union restructuring. Requests from the workers on collective bargaining by elected worker leaders were not observed as well. This massive strike was possible because of a variety of reasons, including the accumulated struggle experiences of workers, both horizontally and vertically; the participation of low and middle levels of management; and the formation of an informal network among workers through social media, such as QQ and Weibo. This industrial action was not the first time that workers had gone on strike in the Yue Yuen factory. Workers had gained strike experiences previously in this factory or others in the past. Secondly, not only the grassroots workers had gone on strike, but also the managers. For example, team leaders participated and encouraged workers to join. Moreover, social media was very popular among the workers, and they formed groups to link up with each other. This strategy of using technology helped mobilization and the diffusion of information among the workers, especially those who were difficult to organize due to the political space in China.

The strike also initiated discussion afterwards. It has been observed that it was a typical example of bargaining by Chinese workers in which they were negotiating and struggling through massive collective action that can be described as a norm. Furthermore, the workers' demands shifted from wages to social insurance. There was also discussion on the malfunctioning of trade unions, such as the ACFTU; state-led bargaining; and doubt about the corporate social responsibility (CSR) system of the brands, as there were training programs and inspections in the factories, but the violation of the law had not been discovered.

Massive actions by workers were not limited to the Sanda Kan, Honda, and Yue Yuen strikes. Artigas workers, manufacturers for Uniqlo, in Shenzhen initiated a strike due to unpaid social insurance. In the Diweixin Product Factory, which is also located in Shenzhen, 300 workers went on strike and took possession of the factory to demand compensation due to the relocation of factories. More recently, not only factory workers participated in strikes, but service workers and those in the informal sector—for instance, supermarket workers and waste pickers—also took action to reclaim their rights.

In all of these cases, police harassment occurred at all levels. First, the police tried to intercept outside NGOs from assisting the striking workers. For example, in the case of Yue Yuen, two NGO organizers were detained by the police and later expelled from the dispute area. A labour activist, Wu Guijun, was falsely imprisoned by the police for one year after he participated in the Diweixin strike. In the UNIQLO case, even the mass deployment of the police was used to evict the striking workers, and 12 outsourced security guards from the First Affiliated Hospital of the Guangzhou University of Chinese Medicine were arrested. In some cases, even lawyers were detained. This trend is contrary to the 2010 Honda strike where the police maintained a low profile in handling the labour dispute. Thus, the term 'collective bargaining by riot/strike' is a common practice in the Pearl River Delta (Friedman, 2014). Nevertheless, the arrest of the strikers did not deter their determination.

These cases also witnessed the inaction of the ACFTU. Despite its lip service, the ACFTU was not effective nor did it aggressively defend the rights of workers after they appealed for help. The demands of the workers were not only confined to wages but also included social insurance and other issues (AMRC, 2015). Most importantly, they wanted to have genuine representation in workplaces. Because of our limitations, we could only use the resistance cases from the Pearl River Delta as examples, but certainly, what is happening in other areas are very much the same, particularly in state-owned enterprises (SOEs) in Rust Belt areas and with taxi drivers and teachers (Zhang, 2015; Luthje, Luo, and Zhang, 2013; Pringle, 2009).

The Labor NGOs

The new generation of labour NGOs can be traced back to 1989 when Han Dongfang and others formed the Workers Autonomous Federation that demanded independent trade unions (AMRC and TUEC, 2009; Robert and Ash et.al., 2011). After the crackdown on the democratic movement, pockets of activists continued their work in various parts of China in another way; some even went to Shenzhen to set up a workers' assistance centre. Meanwhile, civil society and the grassroots movement in Hong Kong grew rapidly from the 1970s. As a result of the Zhili factory fire in Shenzhen in 1993, an industrial fire which deprived more than 80 young workers of their lives, Hong Kong labour groups doubled their efforts to provide support to Chinese workers, particularly migrant workers (Chan et.al, 2014). Concurrently, the 1995 U.N. Beijing Women's Conference inspired the formation of NGOs, including the Working Girls' Home. With help from enlightened intellectuals and overseas funding, labour NGOs gradually emerged in the 1990s (Ming, 2008).

Currently, it is estimated that there are approximately 150 labour NGOs in China with more than one-third of them located in the Pearl River Delta. They provide the following activities: legal counselling, second-hand shops, interest groups, hospital visits, advocacy, fellowship, arts and entertainment, corporate social responsibility monitoring, and many other social services. Some of them are very much labour rights-oriented, but the majority of them are providers of recreational or educational services. The latter NGOs are mostly supported by the local government or management (SSAP, 2014; AMRC, 2014; Qing, 2013). Labour NGOs have difficulty in attaining proper registration, so most of them are either registered as a business entity or have no registration at all. Even if they are registered, they may face forceful closure by the authorities.

After two decades of empowerment, these NGOs are now able to conduct research and formulate labour policy at the provincial or national levels (Ricketts, 2012). Thus far, it is greatly acknowledged that the improvement in industrial injury compensation and procedure, occupational health and safety measures, and the social insurance law are all hard-won struggles by the NGOs (Pandita et.al., 2005). Together with gaining experience from individual cases, they are now moving towards handling and organizing collective labour disputes and working increasingly on advocacy cases. They are paving the way to build up a new labour movement in China as practised in South Korea in the 1970s and 1980s. For example, one labour rights NGO in Yantai, Shandong Province is trying to link all the disgruntled Walmart workers all over China as a parallel organization to the ACFTU. Another case involves an occupational patient, Zhang Haichao, who dared to undergo an 'open chest' operation to challenge the local government. After he won his case, he continues to provide his expertise to help fellow patients through his own NGO. Chen Yuying, a migrant worker severely burnt in the Zhili factory fire, has also established a labour organization in Chongqing for migrant workers and the disabled. Her organization has received widespread recognition from the workers.

These multiplying effects have raised alarm bells with the ACFTU and the government, which have openly attacked them as competitors with ulterior motives and which are supported by 'hostile forces.' They are afraid of the assorted colour revolutions, the Arab Spring and are haunted by the Polish Solidarity movement and the recent Hong Kong Occupy Movement in 2014—any organization of people that may challenge the authority of the government and the party (SSAP, 2014).

It is evident that the Chinese government has been launching an open attack on NGOs by arresting the key leaders and prosecuting them under various charges, particularly in 2015; halting or obstructing their office operations, such

as cutting their electricity or water supply; or blocking their funding sources. Even labour centres run by academics cannot escape this crackdown.[4] In short, labour NGOs have encountered more frequent harassment from the State.

A law was drafted in China to curtail the operation of NGOs (Blanchard, 2016), and despite widespread protests, the law was passed in 2016 and became operative in 2017. Overall, the law will restrict the space of civil society in mainland China. The law threatens freedom of association that is protected by international laws and the Constitution of the People's Republic of China. The law is being enacted because of national security; however, freedom of association is being non-proportionately constrained. More importantly, it harms the development of civil society and brings about challenges to the rule of law in China. Many observers have described the environment of civil society in China as the worst since the growth of NGOs in the mid-1990s. Moreover, the law limits the activities of overseas NGOs, including those from Hong Kong and Taiwan. In addition, the government is limiting the activities of local NGOs that have relationships with foundations and organizations outside of China. To make matters worse, China is spending more money on 'maintaining stability' than on military expenditures.[5]

Looking Into The Future

The spate of suicides by workers at the Foxconn factory in Shenzhen drew much international attention on how workers were treated under military-style management. As more and more Foxconn factories were built inside China, a new dimension of resistance appeared which used sabotage, strikes, and various forms of collective actions against this harsh form of management (Ngai, 2014). The Foxconn story is not an isolated one limited to Taiwan-invested enterprises (Kinglun, 2014), however, a wider alliance of workers across factories in various districts, industries, or among SOEs and migrant workers is not yet on the horizon. Moreover, a united front between the working class movement and the environmental and human rights movements, as well as other organized forms of resistance, is still weak or even non-existent. In fact, the mentioning or the discussion of the term 'class' or 'class struggle' has nearly ceased in intellectual circles (Xin, 2014; Panitch and Albo, 2014). As observed by Robert Weil:

> 'But even though the working class struggles have contributed to a climate that is helping to stimulate the revival of the left in China, those advocating a return to the path of socialist revolution are still relatively few in number and tenta-

4 China Labour Bulletin, 16 March 2015.

5 Mingpao,10 March 2015.

tive in action. They lack the organization, pragmatic clarity, and ties to workers, peasants, and migrants that would give their ideas more practical weight.' (Weil, 2013: 27).

There are also these thoughts of Chun, a researcher on Chinese labour:

'The refusal of the language of class … is a titanic act of the symbolic violence on the part of the Chinese state, committed as part of a political strategy to make way for 'reform and opening.' (Panitch and Albo, 2014: 25).

The talk of 'collective consultation or collective bargaining' and the 'successful' experiments in some places to improve the image of the ACFTU in Zhejiang and Guangdong Provinces will not help to change the power imbalance between capital and labour unless the workers win their three fundamental rights—right to strike, right of association, and collective bargaining (Sheldon et.al., 2011; Chan, 2011). As noted by Boy and others, 'China's centralized system of labour relations, embodied in the united structure of trade unions and national government policies, looks increasingly hollow' (Luthje, Luo, and Zhang, 2013: 336).

At the global level, the International Trade Union Confederation (ITUC) ended its isolation policy with the visits of high-level delegations to China in 2014 and 2015. Together with China recapturing a seat on the governing body of the International Labour Organization (ILO) and the normalization of relations between some global labour federations and individual national centres, such as Change to Win and the American Federation of Labour-Congress of Industrial Organizations (AFL-CIO) in the United States, the ACFTU has won the diplomatic war since the 1989 Tiananmen democratic movement (ACFTU, 1995). Various agencies, including several labour foundations, have rushed to China to train or to indoctrinate China's workers or unions with their own country models or know-how in the industrial relations field. These developments also relate to the debate between Han Dongfang of the China Labour Bulletin (CLB) in Hong Kong and other Hong Kong-based NGOs on the working strategy in China as Han has opted for a more accommodating role in promoting 'collective bargaining.' The NGOs in Hong Kong have criticized Han for forgetting the much broader picture of the continuous absence of basic rights in China (Ness, 2014).

The question is how much this engagement policy can really strengthen genuine solidarity between workplace resistance by Chinese workers and the world against the onslaught of profit-motivated globalization (Deyo, 2013; McDonough et.al, 2014; Harvey, 2014; Sanggoo, 2014). In fact, Chinese workers

are, indeed, 'bargaining without unions'; they are making use of their legitimate leverage over the State to wring concessions from their employers. In the words of Zhang (2015: 187):

> 'Labour unrest and pressure from below are the genuine forces that drive meaningful change in the workplace and reform from above. We should not underestimate the impact of widespread, localized, and apolitical labour protest in China.'

This progress is the real 'new normal' in the area of industrial relations in China. In the Year of the Goat in 2015, strikes continued to rage in Guangdong Province (Halegua, 2015). The slowdown of the Chinese economy and change of economic structure in mainland China with the relocation of factories has triggered more strikes and dissatisfaction among the working class.

What is happening in China is also happening in other parts of Asia to varying degrees and intensity (Ness, 2014; Smith et.al., 2006). China's overseas investment is now creating more labour resistance in other parts of the world. On one hand, Chinese overseas workers suffer from exploitation, and on the other hand, workers in Chinese-invested factories also suffer from mistreatment and malpractices, such as the Ssangyong case in South Korea (AMRC, 2014; Fang, 2013). A people-to-people exchange of experiences and ideas offers hope for the future, because Chinese workers are not slow learners and can assimilate and put into practice the lessons they learn from the experiences of others. By building a strong Chinese labour movement with an international perspective, workers in China and their supporters within the country and abroad can carry on the missing work of the ACFTU in 1925 and build a new labour movement.

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CHAPTER THREE

Organizing Warranty Service Engineers at Samsung Electronics Service Sector in South Korea

by CHO EUN-SEOK

Introduction

Samsung Electronics Service (SES) is a non-producing subsidiary of Samsung Electronics. Its main business is to provide the customers of Samsung Electronics products with after-sales warranty services. There are some 10,000 workers clad in the uniform of Samsung Electronics Service over the country, including repair technicians, receptionists, call centre operators, and logistics staff. Of these, only repair technicians are now unionised. The repair technicians can be categorised either by the way they work (outside service or inside service) or by the products they mostly handle (mobile phone engineers; home appliances repair engineers; and IT technicians who repair PCs, laptops, and printers). A total of 6,600 repair engineers work in 189 service centres across the country, of which only seven are directly run by Samsung Electronics Service. The others are managed by 108 contractors, most of whom were executives at SES. This also means that Samsung Electronics Service directly employs only 10 percent of all engineers.

Samsung Electronics is known in South Korea for its faithful adherence to a no-union policy. From the time of Samsung's founder, Lee Byung-chull, to the current leadership of Lee Kun-hee, Samsung has used any and all means to stop employees from forming unions. At the centre of Samsung Electronics' no-union strategy are careful workplace controls and a thorough system of selective inclusion and exclusion. At Samsung Electronics, for example, the labour management department monitors each individual worker closely (Han et al., 2013). The no-union policy, which has been in place for about 75 years in the territory of Samsung Group, is notorious for its cruelty and intolerance.

There have been some attempts to form a trade union within the Samsung Group but almost all of it have failed, except for a few cases that resulted in small organizations. On the one hand, Samsung management had taken advantage of Korean labour laws that prohibit multiple trade unions at an enterprise level. The management's strategy involves forming company unions pre-emptively once they notice workers having an opportunity to establish a trade union. Fortunately, this notorious law was lifted in 2007.

On the other hand, Samsung is also not reluctant to resort to unlawful measures, such as bribery, retaliation, bullying, or even kidnapping of employees who try to establish trade unions. This draconian policy also applies to all of its subsidiaries and first- and second-tier suppliers. Samsung Electronics Service is no exception. In 2013, however, repair technicians working for Samsung Electronics Service managed to form a trade union and successfully joined the Korea Metal Workers Union, which in turn is affiliated with the Korean Confederation of Trade Unions. Even though Samsung Electronics Service denies a direct employment relationship with these workers, the trade union was the first organization that represents a massive number of workers working for one of Samsung Group's subsidiaries.

This chapter first illustrates the business model of Samsung Electronics Service, with a focus on how this structure has translated into harsh working conditions for repair workers. This is followed by a chronicle of how Samsung Electronics Service warranty engineers managed to form a trade union. It identifies lessons and new trends based on the struggle of the repair persons against Korea's most powerful anti-union company.

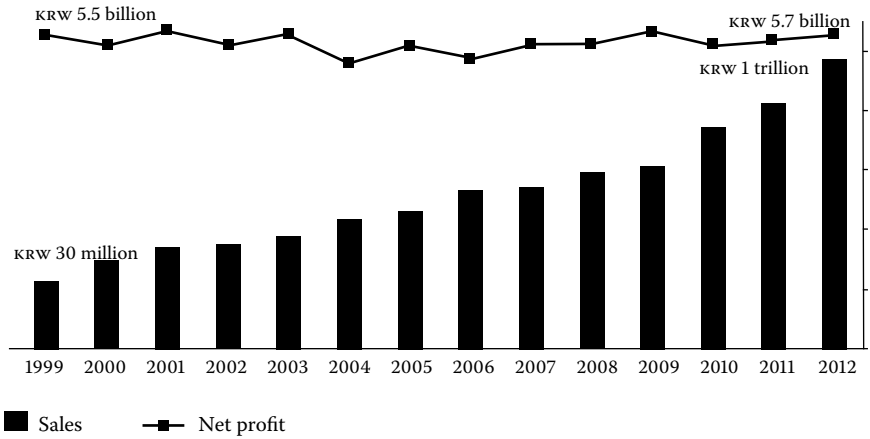
Conditions of Samsung Electronics Service Engineers before Launching a Trade Union

Double-layered Outsourcing

Samsung Electronics used to provide warranty services to its customers through an internal business unit before the 1997 Asian Financial Crisis. In 1999, however, the mother company spun off the customer service unit as Samsung Electronics Service. While it is formally an independent enterprise, in substance, Samsung Electronics Service still remains to be a mere business unit of Samsung Electronics. It provides services exclusively to customers of Samsung products and its corporate policies are determined by Samsung Electronics.

The graph shows strange trends of net profit and sales recorded by Samsung Electronics Service between 1999 and 2012. While the company's net profit basically remained unchanged, sales rose more than three times during the

Figure 1. Sales and net profit of Samsung Electronics Service



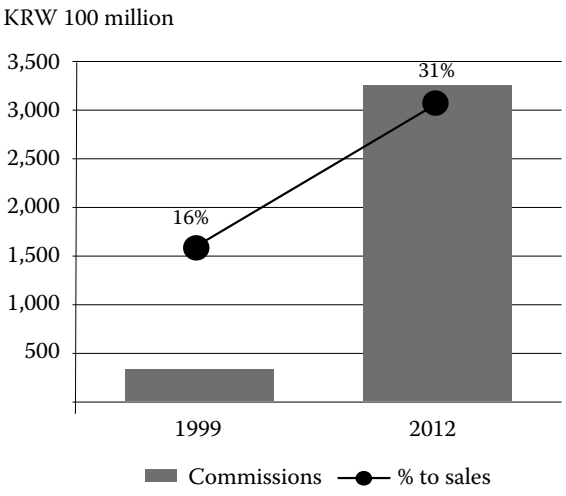
same period. One may presume that profits ought to be limited to, and not exceed, the extent of covering the company's operating capital for the following fiscal year. This suggests that the reason behind Samsung Electronics Service's independence from Samsung Electronics is not to maximise profits, often the first and foremost virtue of a private enterprise, but something else.

We suspect that the purpose of the spin-off is to obtain flexibility for restructuring and outsourcing. Indeed, thanks to the spin-off, Samsung Electronics is able to break off employment relationships paving the way for restructuring to be carried out flexibly. For its part, Samsung Electronics Service also rapidly expanded its own outsourcing modus. In other words, Samsung Electronics outsources its after-sales services to Samsung Electronics Service, while Samsung Electronics Service itself contracts out again more than 90 percent of the work to some 100 contractors.

The following graph shows the ratio of outsourced service commissions to sales and the amounts between 1999 and 2012. One may notice that the main role of Samsung Electronics Service has become to manage contractors, not provide after-sales services directly to customers.

Commissions for outsourced services, which stood at KRW 40 billion in 1999, rose to KRW 330 billion in 2012. The proportion of outsourced service commissions to sales doubled from 16 percent to 31 percent over the same period. As Samsung Electronics Service rapidly expanded its outsourcing activities, its directly employed staff shrank 15 percent during the same period. As of 2012, the number of workers employed by contractors stands at some 9,900, seven

Figure 2. Commissions for Outsourced Services Paid by Samsung Electronics Service



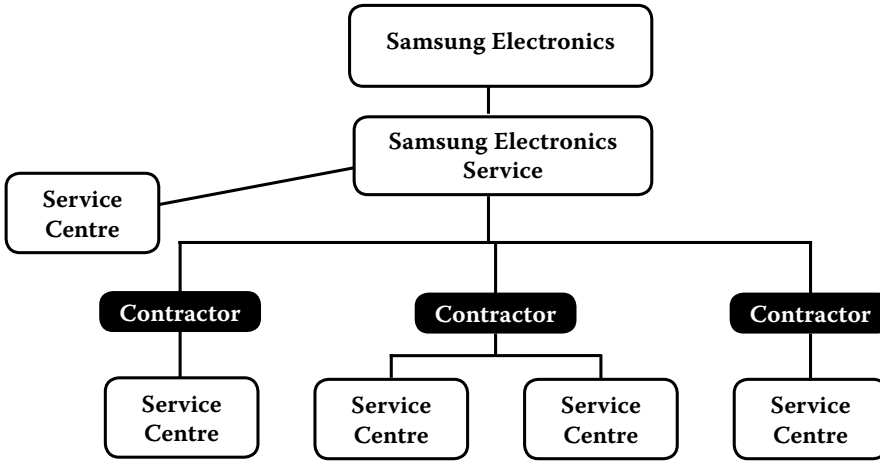
times more than the number of regular workers directly employed by Samsung Electronics Service.

As a result, Samsung Electronics established a 'double outsourcing' scheme, under which the tech giant is allowed to hire skilled engineers without any liabilities stemming from direct employment relations. The structure is shown in the diagram (on page 59).

This structure is designed to guarantee Samsung Electronics Service and its contractors unreasonably great leeway in terms of controlling the work force, making it possible for the entities to institute an opaque wage system and plundering by contractors.

As a result, warranty service engineers' major grievances have included excessive working load (an average of 3,000 hours a year for those working outside the centres and 2,500 hours for those at the centres); opaque remuneration calculation system and extreme wage discrepancies between high-demand and slack seasons; plundering of service fees by centre owners (front men) and their insulting attitudes against service engineers; tremendous stress related to customer relations, inhumane work assessment system, and emotional labour; and excessive obligations required of Samsung employees despite the lack of guaranteed rights due to the disguised employment relations.

Figure 3. Diagram of Double Outsourcing Scheme in Samsung Electronics



Minute-based Piece-rate System

A large part of repair technicians who wear a uniform with a Samsung logo and repair exclusively Samsung Electronics products are hired by contractors who run most of Samsung Electronics service centres, not Samsung Electronics Service. This system allows Samsung Electronics Service to retain skilled maintenance and repair technicians by paying wages less than what the workers deserve. For example, the monthly average salary for the employees directly hired by Samsung Electronics Service is at KRW 7.29 million, which is considerably more than that of someone hired by contractors at around KRW 2.8 million. The job descriptions of the two groups are more or less the same.

At the center of this arrangement is the 'integrated service fee system,' a kind of piece-rate wage scheme, where repair commissions paid by SES are divided into direct repair costs and indirect costs. Direct repair costs are pre-set depending on standard minutes required of a certain model and standard labour cost per minute. Other items under direct costs include costs arising from visiting a customer's home such as travel costs and consultation services. Indirect costs include social insurance contributions and costs required to run contracted centres. The problem is that this system is so complicated that it gives much leeway for business owners of the contracted centres to set wages arbitrarily. For example, Samsung Electronics Service pays repair commissions

of KRW 34,000 to a contractor company if an engineer under that contractor visits a home of a customer to repair a TV set by replacing an internal part. This contractor company then pays around 60 percent of the commissions to the engineer and keeps the rest.

Repair workers are paid on a minutely basis, a variety of piece-rate pay systems. In the above example, the amount of minutes required to repair the refrigerator by replacing an internal part is determined at a certain level by SES, while the pay rate for one minute is invariably set at KRW 225 (about USD 0.2). The problem is that the number of minutes required to perform specific acts is determined arbitrarily and does not reflect the real time engineers usually spend. This has been the biggest source of workers' grievances because managers take advantage of the opaqueness and arbitrariness of this compensation system to control workers. For example, after the trade union was established, managers restricted work for union members to an extent that their earnings went below the legal minimum wage level.

How Samsung Electronics Service Workers Built a Trade Union

Belling the Cat

On July 14, 2013, 400-strong workers attended the kick-off ceremony of a mass-membership union in the territory of Samsung for the first time. It was a rainy Sunday. When the inauguration day was announced, Samsung Electronics Service had ordered the owners of its contracted service centres to schedule an unusual Sunday work and take 'special management measures' for workers. This means that if a repair engineer works on the inauguration day, he or she would be paid between KRW 50,000 and 110,000 extra depending on the amount of work. Workers of service centres with outstanding performance would also be paid an addition KRW 100,000 individually. These rates are unprecedentedly high. However, union members still attended the ceremony.

At the congress, union leadership was elected, local bylaws were passed, and a special resolution was adopted. Wi Yeong-il, an experienced engineer at a centre at Dongrae district in the southern city of Busan, was elected the local's president; Ra Du-sik, first vice president; and Sin Jang-seop, general secretary. Wi told the union members:

> 'When the employees of Samsung Electronics Service receive performance bonus and go on a spree, we, the workers of contracted partners of Samsung Electronics Service, had to weep bitter tears after earning a salary just as much as legal minimum wages. While Samsung Electronics Service called us 'another

family member' when it ordered us to work, it denied any legal responsibilities and tell us to make requests to 'your company. We stand together here to establish the Samsung Electronics Service Local affiliated to the Korean Metal Workers' Union. We will claim Samsung Electronics Service to guarantee workers all rights prescribed under labour laws and the Constitution of Korea, breaking off the rule of Samsung.'

On July 24, the union officially sent a request for negotiation and collective bargaining demands to Samsung Electronics Service. Instead of making a response to this request, Samsung Electronics Service used harsh oppression in the following months; managers at some customer service centres performed special audits specifically targeting trade union members and some centre owners even used physical and verbal violence against union members.

In the past 75 years, forming a trade union was like belling a cat. Everybody agreed with the need to establish a trade union in the Samsung Group's umbrella, but nobody knew how to do it. The recent success first came from the Dongrae Centre. Wi Yeong-il and Sin Jang-seop, who became General Secretary of the local, were pioneers. Wi was the representative for employees in the labour-management council, a compulsory consultation body between the employer and employees at a worksite.

Usually, labour-management councils at enterprises under the name of Samsung were set up only to comply with labour laws and were not really functional. In most cases, employees' representatives are also pro-enterprise figures. However, Wi was different. He wanted to change the terrible working conditions in the site and began to learn the Labour Standards Act. In the past, he did not even realise that he and his colleagues fell into the category of 'workers' as defined by the Labour Standards Act.

They engaged in work-to-rule campaigns and other organized activities and used the statutory labour-management council to have negotiations with the centre owner. After negotiations, the centre owner agreed to accept some of the repair workers' demands. As the story of the Dongrae center was known to service engineers at other centres, however, Samsung Electronics Service closed down the Dongrae Centre. All of a sudden, all the workers lost their jobs. After a month, the centre was reopened, with workers selectively reinstated, excluding Wi Yeong-il and Shin Jang-seop.

This story became public when Wi wrote an article about the unfair de facto dismissal on his blog. It was rapidly circulated to other Samsung Electronics Service repair workers through various social media networks. The discontent and distress that the workers had built over time reached a tipping point and the struggle in the Dongrae Centre served as a trigger.

Engagement of Korean Metalworkers' Union (KMWU)

Workers at Dongrae Centre communicated with repair technicians of other centres. As other workers were sensitive to the closedown of the centre and the dismissal of workers, they were also interested in the Dongrae Centre's achievements. Wi decided that it would be difficult for the Dongrae Centre workers alone to deal with ensuing difficulties and asked for help from KCTU. Union officials at KCTU had to be very careful when they received the request for help because forming a trade union in the Samsung Group was known to be very difficult even for KCTU. They were also not confident if Dongrae Centre workers really wanted to establish a trade union.

For example, some of those who tried to establish a trade union in Samsung turned out to be a 'double agent'. The double agent would intentionally leak secret information that he would build a trade union and meet with KCTU officials. Then the double agent receives money from Samsung and gives up the project. While some double agents are after the money from the beginning, others just give up on the plan to build a trade union due to bribery and threats from Samsung. This is why KCTU had to determine if the request was faithful first. KCTU and KMWU soon found out that the request was genuine.

KMWU held several rounds of unofficial meetings across the country to encourage prime movers. It was announced that the industrial union will organize SES repair engineers and their trade union would be established on July 14. To persuade more members to join the union was not an easy task given the contracted centres are scattered all over the country. Early movers and leaders of SES, however, took advantage of their various personal connections to encourage those who waited and saw to join the union. Those who were members of the 'skilled engineers group' organized key union preparation committee members at the regional and centre level. Senior engineers and those who had influence among colleagues took the lead in persuading other workers.

The number of union members grew from 300 to more than 1,000 in just one month from the inauguration congress. The number of applications forms KMWU received was much more than expected. Meanwhile, KMWU filed a lawsuit arguing that SES is *de facto* employer of engineers hired by partnered centres. Civic group activists picketed partnered centres to encourage repair engineers to join the union. As a result, on July 14, the trade union was turned into the Samsung Electronics Service local of KMWU. Since the local was launched, the number of union members reached the 1,500 mark.

After the local was established, however, the management at partnered centres began to wage a war against union members. Centre chiefs and middle

managers pressured union members to disaffiliate from the union or induced to do so by discriminating against union members. Those who were known to be union members received fewer work volume. Some centres that had relatively larger number of union members lost their business jurisdiction to adjacent centres where union density was low. Members were forced to disaffiliate from the union under pressure, and the number of union members began to fall from the peak level of some 1,500.

Suicide of a Worker

Amidst the harsh oppression, Choi Jong-beom, a 31-year-old repairperson, committed suicide on October 31, 2013. On his suicide note, he wrote of the agony of seeing colleagues suffering from the oppression of management, as well as his hope that (his death) can be of use (for the struggle). KMWU and the local union initiated an all-out struggle under the main slogan of 'Choi's dream of is our dream: Protect our democratic union'. The trade union also called for Samsung Electronics Service to make an official apology and provide compensation for Choi's death, guarantee the freedom of trade union activities, and provide living wages to repair engineers.

In the subsequent months, Samsung customers' organizations, civic organizations, labour rights advocate groups, and union members carried out various activities in the wake of his death. Activities supporting the trade union were carried out by members and various labour activists. Examples included a one-person picket in front of Samsung Service centres, declarations of a public pledge of solidarity between customers and workers, and visiting centres wearing a strip on the shoulder with a message to workers.

However, Samsung Electronics Service adamantly refused to negotiate with the workers. On December 3, 2013, the union initiated an unlimited sit-in protest in front of Samsung Electronics headquarters in Seoul. On the 21st of the same month, KMWU and the Korea Employers' Federation, which represented contracted centres as a surrogate negotiator for Samsung Electronics Service, reached an agreement on six points, including the apology for the death of Choi and guarantee of union activities.

The trade union completed legal steps required to secure the right to strike in January 2014, commencing industrial actions. From January to April, all union members were ordered to wear a union vest and stage warning strikes, rotating strikes affecting a centre for a day or a half day, and demonstrations. In response, Samsung Electronics Service closed down three customer service centres in March. All of the three centres boasted higher organization rates

and main union leaders worked there. The trade union declared this as a fake closedown in an attempt to repress the union. The union added another items in their demands: withdraw the closedown and continue the employment of workers.

SES and owners of partnered centres delegated negotiation authority to the Korea Employers Federation, but KEF did not bargain in good faith and their attitude to the negotiation remained lukewarm. Representatives from KEF were not even aware of how SES engineers' wages were determined and the working conditions under which they worked. The negotiation thus made little progress. The intent of the Samsung Group was to emasculate the trade union, while it bought time on the excuse of participating in the negotiation.

The involvement of KEF made the situation worse on the part of the trade union because it had to handle one more counterpart on top of the already complex employment relations and too many owners. The responsibilities of the employer were distributed and the number of counterparts of trade union was too many. The Ministry of Employment and Labour did not take measures to sanction SES's defaulting on negotiation; Samsung and the agencies were thought to be in each other's pocket.

The economic impact of the strike on service centres was not sufficient to push the management to make a compromise because SES local's unionisation rate stood at a mere 15 percent. The only concern that Samsung Group had was that the strike might tarnish its corporate image. Barring the possible blow to its reputation, Korea's largest company would have been able to bear the strike as long as they wanted. The morale of union members who went on strike was high, but the attitude of SES remained unchanged and the future of the struggle seemed to be bleak. Despite new centres joining the union, total union membership was on the decline. It seemed difficult for the local to bottom out from the deadlock.

Second Suicide

To everybody's sadness, a 34-year-old home appliance repairperson named Yeom Ho-seok killed himself on May 17. Yeom had already left his dying wishes saying, 'when my body is found, please don't bury it until the day of our victory.' On May 18, 2014, however, the police stormed in a hospital where his body was laid and took his body away. With no warning, some 50 mourners found themselves sprayed with tear gas and colliding with 300-strong police force

entering the hospital premises. The police arrested 25 union members and many others suffered injuries.

In his last note to his family, he requested, 'please entrust my funeral process to the local union,' but his father reportedly changed his mind to hold a family funeral in Busan, not the one officiated by the local union. The KMWU and the local decided to hold an all-out strike to protest, and the striking union members gathered in front of Samsung Electronics headquarters again on May 19. On 21 and 22 May, three SES local officials were arrested on charges related to the conflict with police at the hospital.

The square in front of the Samsung Electronics Headquarters became a symbolic venue for the strike. Many people were angry that another Samsung Electronics Service worker killed himself. Organized labour and social movement groups built a consensus that all labour and social movements should consolidate their strengths and go together. Besides, the government was eager to ensure that public sentiment did not carry over to the government, as in the Sewol Ferry disaster that claimed more than 300 lives on April 16 and which made the people more sensitive to death. It was after Yeom committed suicide that authorities and police enforcement agencies began to inspect the activities of the SES local closely.

Conclusion of Collective Bargaining Agreement

In early May, Lee Kun-hee was known to have collapsed due to a heart attack and came close to death. Faced with this unexpected incident, the Samsung Group had to push Lee Jae-yong, Kun-hee's only son and heir apparent to the Samsung Group, to ascend to the corporate throne. The succession plan, however, had many legal as well as ethical issues. The Samsung Group had to pay attention to public opinion and could not make much noise due to its oppression against the trade union.

It was then when the Samsung Group's Future Strategy Office, which served as a control tower to manage key decisions for the entire conglomerate, began to engage the union. Bargaining finally made progress albeit slowly. The second camp-out protests continued until the end of June, 2014. Protestors engaged in various forms of activities, such as rallies, leafleting, and street performances. On June 28, 2014, the Standard Collective Bargaining Agreement was signed and the camp-out protest was dispersed. In November, detailed collective agreements were concluded in each centre.

Lessons learnt from Samsung Electronics Service Workers' Organizing Efforts

This section will explore the lessons learned from the struggle of SES repair workers by reviewing the struggle phase by phase in a chronological order.

Factors to Escape Supervision and Control of the Management in an Early Stage of Building a Trade Union

Popular Support for a Trade Union

SES repair & maintenance engineers were angry about low and insecure wages due to a minute-based wage determination system as well as inhumane treatment from management. This oppression, aimed at frightening union members, this time fanned the anger against the management.

Speedy Union-building Process

Once Samsung Group noticed a movement to establish a trade union, key members would be subject to intensive supervision from the management. Sometimes these key members would make an individual and covert deal with management, or inevitable contacts with management would cause severe distrust among potential union members even without such secret deal. Ptential union leaders meeting management could be a factor in ruining mutual trust. If key members are disclosed during the preparation stage, they would either make a deal with the company and surrender or choose to resist and undergo an isolated struggle.

In order to reduce the risk of key members being disclosed, a small number of key persons should thoroughly prepare and minimise processes. This is to make official the establishment of a trade union, while the small group of key members should make amiable and familiar connections to expand the organization. It took only a month to build a trade union from the time when the dismissals at Dongrae Centre was known to the public. Given the solid and thorough management system of Samsung Group, extending the process of setting up a trade union would just mean more risks of exposing key members to management tactics and more chances for bribery.

Using Social Connections

In establishing a trade union, building a solid social solidarity is an important factor that can even determine the victory of the struggle. Repair workers at contracted service centres took advantage of online messengers to share their stories. This allowed them to gain solidarity support from many groups, such

as Korea Metal Workers Union, lawmakers, and legal advocate groups. Various civic organizations supported the campaign and several cooperative bodies were newly created, which are dedicated to the issue of labour rights in Samsung, despite widespread frustration and doubt about the possibility of winning trade union recognition from Samsung.

Examples include Samsung Labor Watch, a labour advocate group dedicated to protecting human rights of workers at Samsung, and the Alliance for Correcting Samsung Destroying Social Fairness and Violating Labour Rights, formed by over 200 civil organizations and labour advocacy groups. Early affiliation with KMWU allowed the trade union to have access to support from the nationwide industrial union and much-needed strike funds that helped workers of closed centres make ends meet. This demonstrates that whether a trade union will survive depends on how strong solidarity is built through social network.

Activities After the Formation of the Independent Trade Union

Samsung Group's Overall Strategy against Trade Unions and Response from the Management

The Samsung Group, in particular, has a group-wide and integrated system to implement a no-union policy. In 2013, some Korean lawmakers disclosed a document titled the '2012 S Group Labour-Management Strategy'. The 151-page document was presumably drawing up by Samsung Group, and it included the Samsung Group's guidelines regarding trade unions.

According to the document: 'If a union is established in the 19 affiliates which currently have no unions including Samsung Electronics, commit all resources and focus on the early dissolution of the union; and in the case of 8 affiliates which already have unions, disperse the union on grounds of the collective bargaining with the existing union.'

The document also states that if a movement to establish a trade union is recognized, an emergency war room will be set up at the level of the entire group. Therefore, in order to face Samsung Group's reactions to a trade union and ensure a trade union is formed, unionists have to collect every possible resources from social solidarity to match the Samsung Group's all-out support. The document repeatedly stressed the prior collection of evidence on violations to facilitate the immediate filing of disciplinary action against members when a union is established. It also recommended the dismissal or suspension of employees who led the establishment of the union and to induce simple supporters to leave the union. The guideline suggested selecting the so-called 'healthy employees'

in each workplace and designating separate tasks such as interfering with the union's activities, creating favourable public opinion, and guarding against the invasion of external forces in case of an emergency.

The above 'S Group Labour-Management Strategies' call for thorough management of problematic employees and fostering of healthy employees so that they accounted for more than 10 percent of the total staff. These healthy employees would serve as a secret agent for the company and act as pro-company employees. The Samsung Group keeps their existence under cover and manages them as if they comprise a point-by-point organization. Whether a newly formed union survives depends on whether it is able to overcome this pro-company human network. The Samsung Group's policy with regard to an established trade union is to dissolute the union at an early stage or disperse the union on grounds of the collective bargaining with other existing unions.

Indeed, the activities of preparation committee of Samsung Electronics Service workers were relatively covertly carried out, and the management had no time to prepare. What is noteworthy is that there is a pending lawsuit arguing that workers at contracted centres are under disguised employment relations with SES and they be confirmed as employees directly hired by SES. Due to this litigation, the management of SES was not able to engage in the struggle because it would constitute an illegal use of agency work.

Communications Strategies

Framing the Struggle

In an early-stage struggle to win union recognition, framing the struggle is very important. For Samsung employees, who are used to the absence of trade unions, it is very hard to overcome the barrier of no-union policy unless they have a clear reason to join a trade union. The SES local coined catch phrases such as 'We cannot live like this anymore', stressing that even though they were publicly recognized as Samsung's employees they are agency workers, that they suffer from insecurity of wages, and that they face inhumane treatment. Online communications also served as an effective tool in framing the struggle in favour of the trade union.

Media

The chances of establishing a union inside Samsung will be higher if one is able to socialise the issue despite management attempts to hide it. One should continuously socialise the issue via progressive media and online media even though mainstream media, which Samsung probably takes care of, refuses to

cover it. One needs to take into account that depending on media too much without building sufficient influence over rank-and-file employees may have negative effects on organizing. The management may blame union members that they are hurting the company.

Education

In a newly organized trade union, the importance of educating and training employees cannot be overemphasised. In order to expand union membership, a trade union must change the anti-union sentiment among rank-and-file workers, who have received anti-union trainings under Samsung's no-union policy. The local had no time to train and foster union leadership because it had to respond to Samsung's union-busting attempts and go through two rounds of fights instigated by two labour martyrs right after the establishment of the organization. As such, regional branches of KMWU, regional councils of KCTU, and social movement organizations helped the SES local with educating union members. During the education and training sessions prepared by the trade union, service centre owners and some workers turned out to think of the KCTU and KMWU as criminal organizations. This demonstrates that the management's captive audience meeting and anti-union education programs still work.

Messaging to the Public

Online messengers and online communities are an optimal tool for union members to strengthen communications among each other, to respond to employer's public relations campaigns, and to mitigate union members' concerns and worries by detecting the management's attacks at an early stage. SLW initiated a one-person rally, a type of demonstration which does not require an advanced report to the police is not required in advance, and the initiative spread throughout the country. Warranty service engineers felt confident to see these supporters while they are getting to work and going home.

Aggressive Use of Lawsuits

The SES local used labour laws to their full advantage. When Dongrae centre was closed down and key members were dismissed, KMWU filed a lawsuit to confirm that engineers were regarded as employees directly hired by Samsung Electronics Service. The litigation was aimed at stressing that SES was using contracted centers as a means to disguise directly employment relations with the workers. The lawsuit effectively blocked the Samsung Group from engaging in the case because if getting itself directly involved in managing the case was tantamount to admitting direct employment relations. In addition to the lawsuit,

the local also filed litigations regarding unfair labour practices, undue payment of wages, violation of the Industrial Safety and Health Act, and refusal and delay of legitimate requests for collective bargaining.

New trends of resistance identified in the struggle of SES local

Leveraging Traditional Trade Union Strategies as well as New Methods of Struggle

On the one hand, the strike fund of the KMWU played a significant role in helping meet their basic needs of union members who were dismissed or whose contracted service centre was closed down due to union activities. Organizing key members and building relationships among workers from numerous service centres across the country is only possible by building personal connections in the real world. For example, personal connections formed in a group of skilled engineers turned out to be very important in building a trade union.

On the other hand, online communication emerged as a crucial tool for the members of SES local, who even called their organization a 'Band union' after the name of an online messenger. Because the union members are scattered all over the country, using online messengers to share their stories and communicate with each other was a step forward to overcome the geographical barrier. SES local also ran a podcast programme to reach out to SES workers. In order to overcome low strike participation rates of around 10 percent, union members went in unorganized service centres in a variety of flexible ways. They visited unorganized service centres as a customer of Samsung products. This strategy was developed to avoid legal issues, physical confrontation, the involvement of police, and ensuing legal cases related to the traditional ways of entering and picketing unorganized worksites.

Using Soft Power

The importance of soft power in building a new trade union should be emphasised. Framing a struggle in favour of a trade union, considering the psychological element in union members, and other initiatives to strengthen the soft power of a trade union are important to inoculate them from management's anti-union training and to neutralise their acceptance of the corporate credo. The largest part of customer contact points for Samsung Electronics is assumed by customer service engineers. As such, the volume of customer service staff

cannot be reduced up to a certain extent. The company's strategy would be secure as much as there is service personnel who can replace union members. Ways to neutralise the strike breakers should be developed.

Struggle Reflecting the Characteristics of Employees

After-sales service technicians are familiar with smartphones because they receive calls for work on it and do paperwork on a smartphone application. Building communications via online messengers with each other is one of the typical features that represent the characteristics of SES local union members. Going forward, the feature should be evolved into direct actions to help local union members fight against the employer and win their demands. The places of production and consumption are not separated from after-sales warranty service providers. As such, the union activities and industrial actions of SES local members are always done in contact with customers. Therefore, the effect of a strike can be raised if customers provide the local with solidarity support. In subsequent struggles, more concrete tactics should be developed. Repair and maintenance service engineers tend to have relatively more diverse career experience than factory workers who usually begin their career after graduating from high school or finishing compulsory military service. Young union members developed diverse forms of struggles and carried out various cultural performances themselves. The trade union should identify and foster various potential talents of union members.

Struggles Reflecting Employment Status

Regular workers who are involved in a trade union usually face dismissal, threats of being transferred to other worksites and other individual retaliatory measures. In the case of SES local, the termination of contract with service centres and the ensuing closedown was the most powerful attack that management can use. One needs to understand the psychological aspects of the attack in drawing up plans to respond to the closedown of centres. When the Haeundae centre, another contracted service centre in Busan, was closed down, the KMWU did not mention it and let the company announce the information to media. The KMWU and SES local intentionally did not mention and stress the closedown in order to neutralise management's intent to spread fear about closedowns and dismissals. In the following collective bargaining stage, the trade union ensured that it made no compromises in exchange of reopening closed centres.

Social Movement Unionism

Samsung has clung to a 'no union' policy for some 75 years and the Samsung Electronics Service Local of the KMWU is the first mass-membership union at Samsung in Korea. Given that Samsung serves as a pattern-setter in industrial relations by using its influence over its supply chain, building a trade union in Samsung has a significant meaning. As such, the struggle against Samsung should be a social movement. Indeed, support from Samsung Labour Watch, the Alliance for Correcting Samsung Destroying Social Fairness and Violating Labour Rights, opposition parties, civil organizations and labour advocacy groups comprised a major source of power that allowed the local to conclude a master CBA with Samsung Electronics Service.

In a summary, SES local needs to further develop and improve emerging factors and trends while following traditional tactics. Today union density is at historically low levels, and the attitude of government is hostile to organized labour. In this situation, those who want to win a struggle against Samsung need to build a greater social movement.

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CHAPTER FOUR

Labour Regime Transformation in Myanmar: Constitutive Processes of Contestation

by DENNIS ARNOLD & STEPHEN CAMPBELL

Introduction

Critical analyses of labour regulation in the global South have called attention to repressive forms of rule, as governments seeking to attract globally mobile capital compete with each other in a 'race to the bottom' by deregulating capital and restricting labour. In this regard, David Harvey's (2000: 284–311) influential concept of the spatial fix highlights how the global relocation of industrial capital follows a logic of attraction toward restrictive labour regimes in the global South – regimes which promote flexible accumulation through the creation of low-waged, precarious workforces. Similarly, in her analysis of neoliberalism and foreign capital investment in East Asia, Aihwa Ong (2006: 97–118) has identified regional export processing zones as 'zones of exception', wherein workers are excluded by policy from various rights granted to citizens residing outside these sites of industrial production.

Given the attention paid to restrictive forms of labour regulation in the global South, the contemporary (and seemingly counter-intuitive) labour

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situation in Myanmar[1] raises some important questions. Since the promulgation in Myanmar of new legislation in 2011 legalizing trade unions, there has been a flurry of labour mobilization in the country's industrial zones, with significant growth in formal union density. How, we therefore need to ask, do *enabling* forms of labour regulation, in both policy and practice, emerge within contexts where governments face countervailing pressures to restrict workers' organizing? How, in addition, do such enabling forms of regulation articulate with more restrictive practices of rule? And how might enabling forms of regulation support, or potentially challenge, goals of industrial peace and capital accumulation? These are questions that motivate the inquiry we pursue below.

The Myanmar case is particularly instructive for analysing this curious admixture of enabling and restricting forms of labour regulation given its present political conjuncture straddling iconically authoritarian and liberal forms of government. When the National League for Democracy, led by Aung San Suu Kyi, took office in Myanmar in February 2016, the transfer of power was taken by many observers, at home and abroad, as the culmination of a historic transition from authoritarian to democratic rule. Given that Suu Kyi had for years advocated 'rule of law' as the centrepiece of democratic governance, her party's electoral victory at the close of 2015 promised a shift away from the arbitrary, and often coercive, practices of state agents, which had marked the preceding era, and toward a more neutral legal regulation of social conflict.

Yet as critical analysts have pointed out, entrenched military and capitalist interests, consolidated during the decades preceding the 2015 elections, have significantly shaped the country's current political transformation and retain significant influence over government policy (Aung and Campbell, 2016; Ford et al., 2016; Jones, 2014). At the same time, in the context of Myanmar's democratic moment, domestic capitalists have sought to improve their image through appeals to corporate social responsibility; the ILO has been active in promoting 'decent work'; domestic trade unionists have successfully registered hundreds of thousands of workers in hundreds of different unions and Myanmar workers have initiated an impressively militant movement of autonomous workplace struggles.

What is needed, then, is an analysis of regulatory transformation that sees its unfolding dynamic as being shaped and limited by a broader range of interests embedded in conflictual relations. In the case of Myanmar, our argument is therefore that the country's emerging labour regime has been, and continues

1 This chapter uses the current official name Myanmar when referring to the country at present, and Burma when referring to past situations when this latter term was official. We use 'Myanmar' as an adjective for citizens of the country (irrespective of ethnicity) and 'Burmese' to indicate the official language.

to be, shaped by an inter-relation of forces at multiple scales, the dynamics of which a multi-scalar analysis helps elucidate. In particular, this regime has been shaped by past authoritarianism, democratization struggles, efforts to insert key sectors like textiles and garments into the Asia regional division of labour in an orderly manner, and a nascent, but at times quite militant, workers' movement. The result is a protean labour regime exhibiting a mix of coercive practices and non-violent regulatory mechanisms, which aim in their combination to secure worker acquiesce to unequal and exploitative employment relations.

In order to advance the argument laid out above, we sketch in the following section some existing theorizing of spatial scale as the basis for a multiscalar analysis of labour regime transformation. We then proceed with the historicization of labour regulation and labour organizing in Myanmar and theorize Myanmar's contemporary labour regime as a fraught hegemonic project. Following this, we present the case of a five-week-long strike spread over five factories in the Shwe Pyi Thar industrial zone, on the outskirts of Yangon. The case study illustrates competing, and at times contradictory, practices of labour regulation that have developed within Myanmar in recent years. We then conclude by returning to the main strands of our argument.

This chapter is a collaborative outcome of our respective research projects on the organization and regulation of industrial labour in Myanmar. The empirical evidence informing this study is based on multiple rounds of multi-sited fieldwork in Myanmar across a span of more than three years. Fieldwork was carried out between September and October 2013, July 2014, February and March 2015 and July 2016. This included three visits to observe and conduct interviews with the striking workers addressed in the case study in 2015, as well as follow-up discussions in 2016. Methods of enquiry included: interviews with key informants, focus group discussions, in-depth interviews, analysis of secondary reports and news articles, author's translation of Burmese language documents and quantitative questionnaires among 250 workers conducted between March and May 2015.

Theorizing Labour Regime Transformation at Multiple Scales

Discussion on Myanmar's development and democratization has largely been oriented around transitions. Consequently, the more celebratory accounts of the current political milieu – proposing a shift from arbitrary rule to the rule of law – provide an analytically thin understanding of how policy making and implementation in the realm of labour relations are developing within Myanmar's complex political economy. An analysis is needed that sees regulatory change –

and evolving labour regimes – as being shaped and limited by a broader range of interests at multiple scales to better grasp the country's current regulatory transformation.

The concept of 'labour regime' draws on two major theoretical sources of inspiration: Braverman's studies on control of workers at the point of production and the regulation approach which, primarily through analysis of Fordism, focuses on periods of national-scale stabilization despite inherent crisis tendencies in capitalism (Bergene et al., 2010). More recently, 'labour regime' has been employed within critical labour studies to highlight the interconnected ways in which workers, labour processes and employment are organized and regulated in particular spaces. Bernstein (2007: 7) defines the term as the 'interrelations of (segmented) labour markets and recruitment, conditions of employment and labour processes, and forms of enterprise authority and control, when they coalesce in sociologically well-defined clusters with their own discernible "logic" and effects'. Along these lines, Suresh (2010) employs 'labour regime' as a conceptual frame for assemblages of flexibility, restriction, coercion and spatial enclosure — characteristic, he argues, of urban construction employment in India and China. Mezzadri and Srivastava (2015), building on Bernstein's usage and drawing on Pun and Smith (2007), develop an understanding of labour regime that encompasses both the organization of production and of workers' social reproduction.

In this chapter, we similarly employ the concept of labour regime to index regulatory formations of work and employment. But we are more specifically concerned with understanding labour regimes as hegemonic projects aimed at securing worker acquiescence to unequal and exploitative employment relations. This is a conceptualization rooted in Antonio Gramsci's (1971: 279–318) analysis of Fordism. Under the Fordist production model, prominent (largely male) segments of the working class were provided stable, secure and often unionized employment with relatively high wages as a means of garnering their consent to a regimented and intensified industrial labour process. Fordism, then, as a consent-seeking labour regime, served to bolster conditions for industrial peace as a precondition for stable capital accumulation. Following in a Gramscian vein, Burawoy (1985) coined the term 'factory regime' to reference the ways that the organization of the labour process at the point of production could generate workers' consent to exploitative employment relations. While our usage of labour regime is in close affinity to Burawoy, we emphasize consent-seeking mechanisms located at sites and at scales beyond the point of production.

Within Southeast Asia, Deyo (2012: 131) has argued (in Burawoyian terms) that factory regimes in light manufacturing have, since the mid-1980s, shifted from hegemonic regimes to market despotism. Whereas under the former, employers depended heavily on worker consent and cooperation to ensure production, under the latter employers have increasingly relied on coercion and the 'whip of the market'. In Myanmar's ready-made garment sector, coercion and market compulsion do indeed serve to regulate workers' behaviour. Yet new consent-seeking mechanisms, practices and discourses have also emerged — the outcome being a hegemonic regulatory assemblage shaped by forces and actors at multiple scales. While the introduction of scale to labour regime analysis is not in itself a novelty (see Deyo, 2012; Pun and Smith, 2007), what we stress is the role of workers' contestations (i.e. agency) in constituting this emerging, and fraught, labour regime. In so doing, it is necessary to move beyond notions of scale that are pre-given, 'fixed', or designating a form of agency in themselves, such as local–national–global.

Spatial scale has long been utilized as an analytical tool to understand the 'place' of labour in broader development processes. Aihwa Ong (1987) utilized an analytically wide-angled multi-scalar ethnography in which state, transnational corporation, kin group and religious community, and local social actors figure simultaneously in the process of social change within working-class Malaysia. Likewise, studies on labour politics have generated a deeper understanding of the importance of capitalist firms' geographic strategies, of state regulatory institutions, and of labour organizing in the face of challenges posed by capital mobility and/or state labour regimes, illustrating how scales and scalar relations are shaped by processes of contestation (Arnold and Pickles, 2011). Indeed, it has become a consensus among geographers that geographic scales are social constructs, not pre-given dimensions of society (Sheppard and McMaster, 2004). In this respect, the key strengths of the political economic approach lie in its non-fixed conception of scale and concern with relationality through the concept of the politics of scale (MacKinnon, 2011).

Contrary to the claims of some critics (Marston et al., 2005), agency has been a central theme of this research (Castree, 2000; Leitner et al., 2008), reflecting how scholars moved beyond structuralism by investigating how different forces have sought to harness, manipulate and transform social relations (MacKinnon, 2011). Building on attention to intra-institutional agency in the field of labour and development, Arnold and Pickles (2011) discuss scaling development at the Thailand–Myanmar border. They argue that global garment production systems in the border region are underpinned by national and transnational governmental

policies and infrastructural investments aimed at economic efficiency and sub-regional integration. Such attention to scalar politics focuses attention on the strategic deployment of scale by various actors, movements and organizations to meet specific purposes (MacKinnon, 2011).

This attention to scaling development and the centrality of labour politics considers power relations and hegemonic imperatives without pre-assigning hierarchical relations, often conceived as 'local–national–global' encounters. In other words, such relations are more usefully viewed as comprising an assemblage of elements, pulled together at a particular conjuncture, in relation to a given ensemble of labour and territory (Li, 2010). As such, scaling 'up' labour struggles from the firm to the national trade union federation to the global union – the unfolding norm in the Myanmar case explored below – is not, a priori, a strategy conducive to workers' interests. In practice, however, the way scale has been deployed 'evokes a particular presupposition restricting the openness of horizontal politics by predetermining the political as an arborescent register' (Springer, 2014: 410). But this is not the 'natural' order of things. Burmese workers and labour organizers have long demonstrated the potential of navigating scale in non-hierarchical terms, through relational politics that draws in and on a range of actors operating along a multiplicity of scalar registers, without necessarily compromising autonomous concerns (Campbell, 2015). Such already existing practices speak to Marston et al. (2005) and Springer's (2014) call for the flattening of the spatial register, entailing a destruction of the assumed hierarchies and a tearing down of the scaffold imaginary, so that another, more autonomous politics becomes possible.

Indeed, moving away from the grounded particularities that are woven through multiple sites of activity and resistance to the imperatives of states and capital problematically 'delimit[s] entry into politics – and the openness of the political – by pre-assigning it to a cordoned register for resistance' (Springer, 2014, citing Marston et al., 2005: 427) in the case at hand via arbitration councils, tripartite bodies and hierarchical trade union structures. While affirming these sentiments, it is necessary to understand both grounded particularities alongside a multi-scalar understanding of Myanmar's emerging labour regime, which is co-determined by workers' livelihood needs, investors' demands for 'transparent' labour regulation and unfolding hegemonic imperatives of domestic elites. The objective of this approach is to build an understanding of workers' autonomous actions in relation to formations of the state, labour regulation and efforts to secure Myanmar's foothold in the Asia regional division of labour.

Historicizing Labour Regulation and Worker Organizing in Myanmar

Current political and economic relations continue to shape new forms of labour regulation in Myanmar. But the country's emerging labour regime also follows precedents from 19th and 20th century Myanmar history. The pattern historically has been one of labour unrest met by new efforts at regulatory containment by government actors and private employers. The earliest legislation regulating wage workers in Myanmar was promulgated by British colonial administrators in response to growing industrial unrest after World War I (Lwin, 1968: 296–300). Specifically, the colonial government enacted the 1926 Trade Unions Act, legalizing trade unions, and the 1929 Trade Disputes Act, legalizing strikes, both of which channelled workers' struggles into restrictive, government-controlled mechanisms. But when the seminal 1938 oil workers' strike broke out of institutional constraints, police charged the workers with violating articles 124 (criminalizing 'high treason') and 144 (pertaining to 'unlawful assembly') of the 1860 Burma Penal Code, assaulted the striking oil workers, and prosecuted key labour leaders (Gyi, 1938/2012: 47).

After Independence in 1948, both the Communist Party of Burma, with its All Burma Trade Union Congress (ABTUC), and the ruling Anti-Fascist Peoples' Freedom League (AFPFL), which backed the competing Trade Unions Congress in Burma (TUC[B]), actively subordinated workers' struggles to party interests. With the military coup of 1962, labour unions were rendered legally obsolete, following the corporatist ideology of the military's Burma Socialist Program Party. The legal framework for this move was laid out in the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers, which granted authority over labour dispute resolution to new state-run Workers' Councils. Under prolonged military rule (1962–88), workers' unions either disintegrated or went underground. Returning to their historically political role, unions re-emerged in Myanmar in 1988, when new unions were formed amid the country's popular uprising against military rule. In September of that year, newly formed unions federated as the All Burma Labour Union and participated with student groups in anti-government demonstrations. Following a coup by a re-established military junta on 18 September 1988, workers' unions were persecuted and labour leaders arrested.

Aligning with the political opposition against military rule, exiled labour and student activists established the Federation of Trade Unions of Burma (FTUB) in 1991, with U Maung Maung as General Secretary. Other Myanmar migrant workers and exiled student activists in Thailand formed the Yaung Chi

Oo Workers' Association in 1999, aimed at addressing the concerns of Myanmar migrants in the border area. As military rule continued, Thailand-based Myanmar labour organizations, including FTUB and Yaung Chi Oo, received financial support and training from Euro-American labour unions.

While unions remained effectively prohibited in Myanmar, a wave of wildcat strikes erupted in the industrial zones around Yangon between November 2009 and March 2010, with one day seeing an estimated 10,000 workers taking part (Macan-Markar, 2010). This strike wave was followed, in the context of Myanmar's post-2010 political transformation, with the widening of legal space for labour organizing in the country. This space was delimited by two new labour laws drafted with guidance from the International Labour Organization (ILO, 2013). The new legislation includes the October 2011 Labour Organization Law, which legalizes 'basic labour organizations' (trade unions) and repeals the 1926 Trade Unions Act. While the ILO provided significant input on these laws, it seems the Myanmar government did not simply rubber-stamp the ILO's legal model. As criticized by the head of the ILO's Promoting Freedom of Association in Myanmar project, which ended in early 2016, certain clauses introduced into the 2011 law – namely, restrictions on cross-sectoral industrial unionism and the requirement that unions have at least 30 workers in a given workplace — are 'not in line with international standards' (Larlee, 2015).

At the start of 2012, in the space opened up by the new Labour Organization Law and the liberalization process more generally, another wave of strikes erupted at the Hlaing Thar Yar and Shwe Pyi Thar industrial zones on the outskirts of Yangon, and a third zone in nearby Hmawbi Township (Campbell, 2013). As the strikes continued, in March 2012 the Myanmar government pushed through a Settlement of Labour Dispute Law, which established a legal framework for the government's new Dispute Settlement Arbitration Council. Supporting this council, the ILO has provided regular training to government arbitrators, and has brought to Yangon officials from Cambodia's Arbitration Council to share their experiences of labour dispute settlement with their Myanmar counterparts, despite the highly conflictual industrial relations environment in Cambodia. Tellingly, by mid-2015, many Myanmar workers had lost confidence with their country's Arbitration Council due to its perceived pro-employer bias (Htwe and Barron, 2015). The ILO has nonetheless maintained that the Council, which aims to 'ward off strikes', has been 'remarkably successful' (Htwe and Barron, 2015). According to an ILO representative,[2] the Myanmar government's priority in the lead-up to the

2 Interview, ILO official, Yangon, 16 February 2015.

November 2015 elections was to introduce a broad range of policy changes, including a legal framework conducive to foreign investors.

With the introduction of Myanmar's 2011 Labour Organization Law, trade unions have proliferated, with nearly 2,300 unions registering by late 2016.[3] Among the groups involved in the recent unionization push is FTUB, which returned to Myanmar from exile in 2012, renaming itself first as FTUM (M for Myanmar), and then registering itself in July 2015 as the Confederation of Trade Unions of Myanmar (CTUM). Other new union federations in Myanmar include the Myanmar Trade Union Federation (MTUF) and the Agriculture and Farmer Federation of Myanmar (AFFM–IUF).

In the post-2010 period, labour organizations and activists returned to Myanmar from exile, bringing knowledge and experience acquired through years of border- and Bangkok-based activism and struggle in Thailand to bear on contemporary labour organizing in Myanmar. This cross-border movement of knowledge and experience pertains not solely to CTUM, but also labour activists operating outside formal unions. Yaung Chi Oo, for example, has provided training and shared lessons learned from its own experience of workplace struggle in Thailand with labour activists and worker organizers in Myanmar – mostly among factory workers in the Shwe Pyi Thar industrial zone. At the same time, some of these organizations have evoked tensions with activists who remained in Myanmar through the Junta periods, as well as with many workers seemingly uninterested in liberal organizational structures and norms – a challenge to the 'transitional' narrative prevalent in Myanmar.

Despite the multitude of unions and non-union labour organizations currently operating in Myanmar, CTUM has been by far the most strongly supported by international labour organizations like the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), as well as the International Trade Union Confederation (ITUC) and IndustriALL, of which the CTUM or its affiliates are members. Consequently, the ITUC (2012) has singled out U Maung Maung as the 'leader of the country's trade union movement'. Yet CTUM, and U Maung Muang in particular, have long been controversial among Myanmar pro-democracy and labour organizations. In 2010, CTUM's (then FTUB) former Secretary of Finance and Development, U Zaw Tun, issued an open letter charging U Maung Maung with undemocratic appointment of union leaders (starting with U Maung Maung's self-appointment as FTUB General Secretary in 1991 – a position he has held ever since), arbitrary suspension and termination of

3 Total number of employer/employee associations, Myanmar Ministry of Labour. www.mol.gov.mm/mm/departments/department-of-labour/dol-manpower-statistics-division/emp-asso-lists/ (accessed 17 November 2016).

members, and misuse of organizational funds. Other ex-CTUM members have argued that the organization 'does not follow a true democratic system and their strict hierarchy has led to unbalanced internal decision making' (*Phophtaw News*, 2012). Myanmar labour activists outside CTUM have criticized the organization for having a 'monopolistic approach and lack of transparency' (Warda, 2013). And during a 2013 ILO-organized Labour Organization Conference in Yangon, as participants were set to vote on a Myanmar representative for the upcoming International Labour Conference in Geneva, some attendees charged CTUM (then FTUM) with having used its financial clout to bring in people who were not from established workers' organizations in order to secure the election of an FTUM member to the upcoming Geneva conference (Campbell, 2013).

According to outgoing MTUF President, U Aung Lin, the sudden quantitative boom in enterprise and national-level unions has led to numerous complications and conflicts.[4] He claimed, for instance, that among the multiple layers of emerging trade unions in Myanmar, there is a stratum of trade unionists defined by their capacity to maintain good relations with international NGOs and trade unions through conference participation, research and report writing and other, largely English language-based activities, which facilitate expansion of organizational budgets, allowing such unions to employ full-time staff. The same handful of people thus tends to be involved in union activities and knowledge is not shared with the wider membership. Many union leaders are also, he points out, government aligned and regularly report labour movement activities to the Ministry of Home Affairs. Finally, there is a rapidly increasing number of corrupt unionists – people who rise through the ranks at workplace and national-level unions seeking financial profit, status and power. Current divisions among trade unions relate, U Aung Lin suggested, to differences in approach. Some orient around social dialogue, others privilege institutional and regulatory reform. Some focus on 'chasing' and organizing strikes, while others privilege capacity building to raise workers' skills and knowledge. At the time of the interview, MTUF received no financial support from international or domestic organizations, and all leaders worked full-time jobs. MTUF's strategy, thus far, has focused on grassroots mobilizing, developing relations with reform-minded individuals in the Ministry of Labour and developing working relations with the Myanmar Garment Manufacturers' Association (MGMA) and other business groups in order to help 'solve problems' that emerge between employers and workers.

In sum, MTUF and CTUM converge in adapting the social dialogue model championed by the ILO as part of its Decent Work programme. The notion of

4 Interview, U Aung Lin, Yangon, 21 July 2014.

social dialogue replaces adversarial bargaining, as Standing (2008) notes, and thus works in the interest of global capital to minimize industrial action and labour unrest. Capitalism becomes invisible and glaring disparities in wealth are discursively omitted with acceptance of the possibility that globalization can be given a 'human face', and that capital can be persuaded that workers are vital to its reproduction (Munck, 2013).

It is against this backdrop of conflictual labour federations, who converge in adopting social dialogue as a (sub) hegemonic organizational norm, that the expansion of trade unions in Myanmar needs to be understood. Aside from expanded unionization, one effect of the 2012 strike wave was to instigate a bill in the Myanmar parliament to set a national minimum wage for private sector employees (*Mizzima*, 2012). The outcome of this bill was the 2013 Minimum Wage Law, which established the legal framework for determining and enforcing the minimum wage. The specific amount of the new minimum wage was set in July 2015 at Myanmar Kyat (Ks) 3,600 per day (about US$ 3.50). Labour organizations criticized this amount as being insufficient for workers to meet their basic needs, while employers' organizations claimed they could not afford to pay wages at this rate (Aung, 2015). When the new minimum wage came into effect, many Myanmar workers in fact saw their incomes remain static, or even decrease, as employers 'slashed bonuses and stopped allowing overtime hours' (Aung and Phyu, 2015).

At present, then, there persists a mix of formal labour regulation, with workers pursuing both (informal) autonomous workplace struggles and formal procedures as part of registered unions. Workers have complained about the employer bias of the government's Arbitration Council, while MTUF officials have said the Settlement of Labour Dispute Law has not been able to resolve labour-management conflicts (Aung and Aung, 2015). For the government too, it seems that the 2011 Labour Organization Law and 2012 Settlement of Labour Dispute Law have been unable to achieve the goal of preventing strikes. As a result, police have been deployed to use force against striking workers, justifying this violence under Myanmar Penal Code (1860) Article 505b, which criminalizes the making of statements that might cause 'fear or alarm to the public' leading to offences against 'public tranquillity'. As occurred in the strike described below, police have also deputized plain-clothes civilian vigilantes to violently disperse striking and protesting workers, a move made legal by Myanmar Code of Criminal Procedure (1898) Article 128 (*The Irrawaddy*, 2015). Both Articles 505b and 128 – are remnants of 19th century colonial legislation.

In these ways, contemporary forms of labour regulation and worker organizing in Myanmar exhibit continuity with elements of 20th century Myanmar history.

Myanmar government officials have drawn on colonial era laws criminalizing assembly and dissent in order to contain labour unrest. And contemporary inter-union conflict recalls the post-World War II fracture between the ABTUC and TUC(B) – though present-day splits appear little informed by ideological differences. Insofar as they channel working-class power, capitalists and states generally regard unions as antagonists. However, as examined in the case below, organized labour in Myanmar should not be considered as having autonomy from capitalists, the state, or international civil society. Indeed, traditional relations of representation and hegemony construction have been thrown into disarray and trade unions are no longer the undisputed articulators of mass discontent (Munck, 2013). This points to contentions that unions are of a 'dual character' as quasi statist institutions rooted in a segment of civil society, which helps explain the ways they are incorporated into hegemonic projects (Glassman, 2004: 582) like social dialogue. This is particularly salient in Myanmar, where activists had long scaled up solidarity appeals to the international level to pressure for regime change. Many organizations, particularly in exile, became dependent in this way upon international alliances for their existence, and have folded into dominant liberal norms advanced by the ILO and global unions. The country's 'opening' has subsequently led many domestic union federations to seek cooperative relations with the state and capitalists to weather the current transition and foster legitimacy. Not surprisingly, unions are increasingly positioned in the multi-scalar labour regime as mediating 'local' workers' livelihood demands, national-level regulation and international norms – thus leading to calls to scale up 'local' organizing to the national and international levels, a practice that, as mentioned, is not necessarily conducive to workers' livelihood needs.

This mediating approach reflects the long-running practice of liberal Western trade unions. For Hardt and Negri (1994), through much of the 20th century trade unions constituted a fundamental point of mediation between labour and capital and between society and state. Collective bargaining held a privileged position in the establishment and reproduction of the social contract. And trade unions had the dual purpose of providing an avenue for workers' interests to influence the state and capital, thus potentially legitimating state rule, and at the same time deploying the discipline and control of the state and capital through the workforce (ibid.). Here, the trade union is viewed not so much as a vehicle for the expression of worker interests, but rather as a means to mediate and recuperate the antagonisms born of capitalist production and capitalist social relations – thus creating a worker subjectivity that is recuperable within and actually supportive of the (global) capitalist order. This approach is predicated on material gain in exchange for acquiescence to

capitalist labour, a 'bargain' that capitalist firms in Myanmar are hardly willing, or indeed able, to enter.

The Fraught Hegemony of Myanmar's Emerging Labour Regime

Labour regulation in contemporary Myanmar illustrates varied, and at times conflicting, efforts by employers, state officials and international agencies to ensure stable capital accumulation under conditions of labour unrest. These efforts have included consent-seeking forms of regulation, like the government's Dispute Settlement Arbitration Council, as well as coercive forms of regulation, like violent police crackdowns on workers' strikes.

For the ILO, labour rights and workers' freedom of association in Myanmar are seen as means of preventing strikes (Htwe and Barron, 2015). This understanding follows from the ILO's more general approach of encouraging institutions that facilitate social dialogue between employers, workers and governments as means to promote 'industrial peace' (ILO, 2016). For the Myanmar government, the establishment of institutions promoting 'industrial peace' aligns with an overarching goal of attracting foreign direct investment in a context where foreign corporations remain wary of investing in Myanmar due to concerns over the political, legal and financial security of their investments (*Eleven Media*, 2015) during the 'transitional' conjuncture. The previous section suggests that the broad strokes of both government and trade unions' positions are in accord with the ILO's approach. Meanwhile, the US Trade Representative to Myanmar initiated a 'labour law cluster' project to advise Myanmar's Ministry of Labour in drafting labour laws covering occupational health and safety, employment contracts and the minimum wage.[5]

Among their effects, newly legislated labour rights have opened avenues for workers in Myanmar to pursue demands that could challenge profitability beyond apparently acceptable limits. In such situations, employers and government agencies have fallen back on more coercive means to contain worker unrest, as elaborated in the case below. It is due to this (unstable) mix of coercive and consent-seeking forms of regulation that we understand Myanmar's labour regime as integral to a hegemonic project aimed at securing worker acquiescence to unequal and exploitative employment relations. For Gramsci, hegemony refers to the exercise of moral-political leadership by dominant over-subordinate classes. Such leadership is pursued, and may be more or less achieved, through 'non-violent forms of control exercised through the whole range of dominant

5 Interview, Solidarity Centre representative, Yangon, 4 March 2015.

cultural institutions and social practices' (Mitchell, 1994: 553). Hence, consent-seeking forms of labour regulation – legislated employment protections, state-regulated trade unions and the government's Arbitration Council – present the state to workers as a neutral arbiter of employer–employee relations open to supplication, rather than a partisan defender of capitalist interests.

This hegemonic project is *fraught*, however, by virtue of the fact that consent-seeking forms of regulation which aim to prevent strikes also provide avenues for workers to pursue demands that could threaten capital accumulation. Given the persistent overflowing of workers' struggles in Myanmar, state actors have had to deploy coercive forms of regulation in order to contain the more ambitious instances of workers' collective action. This deployment of force is consistent with Gramsci's conception of hegemony, in which ideational and material realities are mutually imbricated and mutually constitutive forms of power. When, however, state actors deploy coercive force to rein in disruptive workers' struggles, they weaken, and may effectively undermine, their own new-found claims of neutrality and moral leadership, claims hard-won after a half-century of repressive military rule.

No hegemony can ever fully overcome its own contradictions. Labour regimes, as hegemonic projects, thus remain perennially contested arrangements (Anner, 2015; Jonas, 1996). In Myanmar, the recent escalation of labour unrest has an important historical specificity. As a Myanmar-based ILO official explained, one effect of legal labour rights being suddenly 'granted' to Myanmar workers in recent years has been that, coming after 50 years of repression, wildcat strikes are now widely pursued *in advance* of negotiating with employers, rather than, as the Settlement of Labour Disputes Law would have it, only once government-regulated negotiations have failed to produce a settlement.[6]

While Myanmar's emerging labour regime is a fraught hegemonic project, it is nonetheless an assemblage whose specificities have been shaped and limited by a broad range of interests, at multiple scales. These interests include those of the ILO, international labour unions, domestic trade unions, Myanmar workers, foreign investors, foreign governments and domestic capitalists. Properly grasping the development of Myanmar's emerging labour regime thus requires recognition of how differentially situated actors have influenced the making and implementation of regulatory policies that strategically couple the scale of the workplace with that of the national development project. The 'citizen worker' in this formation is framed as morally invested in the 'transition' to liberal national development. Yet Myanmar workers, as illustrated in the case below, have often

6 Interview, ILO official, Yangon, 5 March 2015.

rejected the terms of their insertion into national development and industrial capitalism. This has important implications in Myanmar because the labour regime is rapidly evolving and fluid, as illustrated in the following case study.

Scaling the Labour Regime in Shwe Pyi Thar

Myanmar's emerging labour regime, we have demonstrated, shows many traces of a half-century of military rule, a period in which trade unions were banned or tightly restricted, international organizations had no room to operate and workers' demands were readily suppressed. An ensemble of coercive and consent-seeking forms of regulation is imbricated with this history, at an historic conjuncture in the nation's political economic transformation that workers' actions play a role in shaping. To illustrate, we present here a brief garment sector overview, followed by the case of a five-week-long strike that took place at five factories in Shwe Pyi Thar, one of Yangon's key industrial zones, from late January to early March 2015. At the time, Myanmar's Ministry of Labour, Employment and Social Welfare (2015) urged the workers to accept 'short-term sacrifices' in the form of low pay and excessive working hours in the interests of bolstering international investor confidence (manufacturers from China, Korea and Japan in this particular case), deemed necessary for the national economic development project. This appeal for industrial peace to placate skittish international investors by the 'left hand of the state', here represented by the Ministry of Labour, went unmet. The workers were then confronted with the violent and disciplinary right hand of the state – initially the police, and eventually hired thugs/vigilantes and the courts. Between the state's consent-building left hand and coercive right, workers' autonomist efforts became embroiled in other dimensions of the multi-scalar labour regime, including the hierarchizing tendencies of trade unions, and globally-extended textile and garment production logics.

By early 2015, approximately 195,000 workers were employed in some 210 active export-oriented garment factories in Myanmar, 95 per cent of which are concentrated in Yangon. Roughly 100,000 others were employed in smaller workshops or home-based subcontracting firms not linked to the international garment value chain.[7] The export garment industry consists primarily of assembly contracts for foreign buyers, known as 'cut-makepack' (CMP). A study carried out in 2013 (cited in ILO, 2015) divides Myanmar's garment factories into three main categories. The first are larger factories, usually with more than 1,000 workers, either 100 per cent foreign-owned or operating through joint ventures. Estimated at around 20 factories at the time, they have the capacity to operate

7 Interview, Myanmar Garment Manufacturers Association (MGMA) representative, Yangon, 27 February 2015.

on a 'free-on-board' basis — a step 'up' the value chain from CMP, under which buyers provide Myanmar firms with the inputs for a garment, which is then cut, sewn, assembled and packed for export by the manufacturer. The second group, consisting of 30 factories, is also small. These factories are locally owned or joint ventures and typically employ between 500 and 1,000 workers. While these CMP firms show limited quality and innovation in their machinery capital, lower labour conditions and management skills, they exhibit growth potential. The third and largest group (160 factories) is characterized by fewer than 500 employees, local ownership, inadequate machinery, the poorest labour standards among firms in the three categories and low management skills.

Foreign direct investment (FDI), either in the form of wholly foreign-owned enterprises or joint ventures, has driven much of Myanmar's recent garment sector growth. In 2015, around 50 per cent were locally owned or joint ventures; the others were wholly foreign invested, a near doubling in the proportion of foreign-owned factories from the 2006–11 period (ILO, 2015). However, one estimate notes that a further 20–30 per cent of locally owned factories are 'shadow companies' registered under a Myanmar citizen with a silent foreign partner (SMART Myanmar, 2015b: 7), due to past regulations restricting foreign investment. FDI comes predominantly from Korea, followed by China, Taiwan and Japan (SMART Myanmar, 2015a). There was a doubling of export value from US$ 0.7 billion in 2011 to US$ 1.6 billion in 2014, with exports to Japan and Korea comprising roughly 70 per cent of the market in 2014. The sizable East Asian export market is due primarily to its continued sourcing in Myanmar during the US and EU sanction periods (2003–16 and 2006–13, respectively). As a result, many manufacturers specialized in servicing Japan's smaller-order quantities and high quality-control demands. Furthermore, the industry specialized in woven products, as Japan granted a tariff exemption for woven products from Myanmar (SMART Myanmar, 2015a). Thus, to date there are few factories specializing in cheap T-shirts, jeans and other ready-made garments that characterize production in Bangladesh and Cambodia. But this is changing with rapid expansion of exports to the European Union, fuelled by orders from Swedish clothing chain Hennes & Mauritz (H&M) and other buyers of 'fast fashion'.

In sum, the sector is changing rapidly and local industry may not be able to adapt.[8] Many domestic garment companies are now facing stiff competitive pressure and are seeking international partners as a survival strategy. Already, many have been forced to close down over wage, quality and other issues; some may survive and stay small and sell to local markets, or work as subcontractors

8 Interview, ILO official, Yangon, 5 March 2015.

for bigger, foreign-owned factories. These dynamics illustrate the fact that capital is not internally homogeneous. The state is thus positioned between manufacturers inclined to resist emerging labour and social rights practices and discourses, and international buyers keen on promoting a 'clean' image for their sourcing in Myanmar.

Women comprise 93 per cent of Myanmar's garment workforce (SMART Myanmar, 2015b), with the majority being young, 'unskilled' rural–urban migrants (ILO, 2015). In 2015, wages in the (export) industry averaged US$ 95–125 per month, inclusive of overtime pay and bonuses (SMART Myanmar, 2015b).[9] A survey conducted by one of the authors found that base pay at the three striking factories was Ks 30,000–45,000 per month. Take-home pay, including bonuses and overtime, averaged Ks 95,130 per month. From the 26 workers surveyed from the three factories, only six reported being able to meet their needs while also saving money. Another worker reported[10] that she breaks even most months, while 19 others reported debts ranging from Ks 30,000 to 500,000. One of these indebted workers was paying 10 per cent monthly interest, while 17 others were paying 20 per cent, and the last was paying 30 per cent. High-interest debt is a problem for anyone, but more pronounced for young women who are expected to remit to support household social reproduction, according to numerous workers interviewed. None of the workers interviewed had a work contract, nor any form of health or social insurance. Working hours averaged from 10.5 to 11 hours per day.

On 28 January 2015, workers from five garment factories began a sit-in strike. Three of the factories are Korean owned: Costec International Company Ltd., E-Land Myanmar Co. Ltd. and Hanjen Manufacturing Company Ltd.; one is Chinese owned: Ford Glory; and one is Japanese: Red Stone Garments. Of the five factories, Red Stone settled first in early February, Hanjen workers returned to work after the first confrontation with police on 20 February and the Costec, E-Land and Ford Glory strikes lasted until 5 March. Ford Glory produced for export to China, and E-Land and Costec produced for the Korean market.[11] A core demand was a base-salary increase to Ks 60,000 for every worker. Notably, several other demands (such as for union recognition and for sick and holiday

9 US$ 1=Ks 1,031 as of 20 February 2015. Source: xe.com (accessed 24 February 2016).

10 Survey of 250 workers, Yangon and vicinity, March to May 2015.

11 The Seoul-based Korean TNC Watch attempted to pressure E-Land and Costec to accede to workers' demands; however, given the relatively weak position of these organizations vis-a-vis transnational Korean capital, efforts to 'scale-up' were not fruitful in this case. See: http://penseur21.com/2015/03/06/open-letter-strike-in-the-south-korean-owned-garment-factory-in-myanmar/ (last accessed 25 February 2016).

leave without deductions) were for rights already legally due to workers, indicating lack of implementation of existing labour law.

There were four rounds of government-mediated negotiations in February. On 12 February, the Deputy Minister of Labour, Employment and Social Security, along with employer representatives, met with labour leaders regarding salary increases, but failed to reach an agreement. Then, on 17 February, E-Land employees met the Rangoon Division Chief but declined his offer to have the company implement a Ks 12,000 per month raise. At a further round of negotiations, when workers again refused an offer from the employer, a government mediator declared, 'Since the workers are not satisfied with the employer's ability to increase wages, [the workers] can spend [their] whole lives at the strike camp.'[12]

After another round of negotiations, on 20 February, the government gave a one-hour warning to striking workers who were blocking factory entrances. The divisional government also issued a public statement declaring that legal action would be taken against employees or employers who 'harm peace and rule of law', specifying that violence and protests that countered the law would be punished, and noting that striking workers were obstructing gates near the factories, preventing those who wanted to work from doing so, and blocking deliveries. According to an MGMA representative, the Korean, Chinese and Japanese embassies had all lobbied the Myanmar government to stop the strike and enable resumption of operations.[13]

On 20 February, baton-wielding police moved in to disperse protesting E-Land workers. Dozens of protesters were injured in the clashes, with some requiring hospitalization after they claimed police stampeded over them (Barron and Kyaw, 2015). Police also moved in to disperse and arrest striking workers who were staging sit-ins in front of other factories in the zone. Local residents joined in at this time to help the workers push back the police. After the three dispersed protests merged at E-Land, strike leaders said that they came to rely on the local community for support not only with food, but also for warnings of when police were mobilizing in the area.

Subsequent to this attempt to end the strike, the Ministry of Labour, Employment and Social Welfare, and the Yangon Regional Government issued notifications to the striking workers on 23 February. Essentially, the statements argued that 'worker-citizens' should (temporarily) make livelihood sacrifices so as to not scare off investors deemed necessary for the FDIled national development

12 Quoted in a leaflet issued by the striking workers, author's translation.

13 Interview, MGMA representative, Yangon, 27 February 2015.

project. As the notification from the Ministry of Labour, Employment and Social Welfare (2015: 2) stated:

> Although the wages of Burmese workers are currently not the same as the wages of others in other ASEAN countries that have well-developed labour markets, their incomes will increase and more opportunities and choices will occur when their skills improve and the labour market becomes strong. For the economic development of Myanmar and more job opportunities for the people, the government is inviting foreign investment and encouraging them to do businesses in the country. If factories have to close due to illegal and violent strikes and demands, the ones who will become unemployed and face hardships are the workers. The foreign investors' confidence in the government will also decline. Therefore, it is essential to take serious measures to prevent unnecessary illegal activities again.

Workers' rejected these sacrificial appeals. After the first crackdown on protesting workers, the case generated much attention from the media, as well as from the MGMA, the ILO, foreign embassies, international trade unions and NGOs. The relationship between the striking workers and the trade unions, typically the first institutional actor to come to striking workers' assistance in such situations, was tense and elicits hierarchical (vis-à-vis 'flat ontological') notions of social and political agency embroiled in labour regime constitution. One strike leader noted that generally speaking there have been many problems between union federations and workers.[14] The first is trust. There are multiple federations operating in the industrial zones, he said, but it is only during strikes that they show up, distribute some food and water, and register the workers as members of their union. They are only interested in gaining members, he added, and 'they just want to go to the ILO conferences'. This was a pattern he said he had witnessed on several occasions. He thus did not trust these federations because they did not provide continuous support. Confirming this report, another strike leader stated that CTUM had shown up during the first days of the strike, offering money and food, and seeking to eventually register the workers as members of their union.[15] The workers refused, claiming lack of trust, and the CTUM representatives did not come back. Another activist claimed that the union federations were afraid to get involved due to the crackdown.[16] Notably, in follow-up interviews conducted in July 2016 workers involved in

14 Interview, strike leader, Yangon, 21 February 2015.
15 Interview, strike leader, Yangon, 21 February 2015.
16 Interview, labour rights activist, Yangon, 7 March 2015.

this strike described enterprise-level unions positively, as coterminous with the workers themselves, whereas existing union federations were seen as outside entities. This perspective stemmed from the absence of paid, non-worker staff in enterprise unions (unlike federations) and the de facto direct democracy of their own enterprise unions.

In the case of the Red Stone settlement, MTUF assisted the workers involved. MTUF is also the national federation with the highest proportion of manufacturing sector affiliates, demonstrating a more solid connection with grassroots union members and rank-and-file workers prior to this strike. The union did, however, sign a Memorandum of Understanding with the MGMA in the months preceding the strike, and urged the workers to 'respect the rules' in Myanmar's emerging industrial relations (Aung and Aung, 2015). In no small part, such efforts by MTUF are necessary to create an orderly, consent-based mediation of capital–labour relations. Yet they also serve to bolster the unions' legitimacy in tripartite institutions both domestically (as committed to 'national development') and internationally (as committed to international industrial relations norms).

The MGMA also expressed a clear interest in the strike. As the lead employers' organization promoting investment in the garment sector, they are keen to see an expansion of high profile, particularly Western, buyers. An MGMA representative noted that H&M is sourcing from a dozen factories in Myanmar, has a liaison office in Yangon and is part of a supply chain shift inducing factories in China to relocate.[17] Furthermore, as of early 2015, Adidas officially began sourcing from Myanmar, as had companies such as Marks and Spencer, Tesco, Primark and Decathlon. According to the MGMA representative, most of these companies were taking a similar approach — they wanted to diversify sourcing locations in Asia and were testing the waters by sourcing from one or two factories and potentially expanding from there. This is the first time in roughly 20 years that internationally recognized Western apparel brands have sourced in Myanmar, and current developments are deemed critical to the industry's expansion. Yet according to an ILO official in Yangon,[18] many brands remain wary — even scared — about sourcing in Myanmar. They are fearful that if anything 'bad happens' they will be 'strongly hit on the head due to Myanmar's history'. If this were to happen, she noted, it is quite possible these brands would close operations and leave. In 2015, with EU funding and technical support, the MGMA issued guidelines for a voluntary Code of Conduct, designed to facilitate reputation-conscious buyers' orders and bring manufacturers into the

17 Interview, MGMA representative, Yangon, 27 February 2015.

18 Interview, ILO official, Yangon, 5 March 2015.

(discursive) CSR fold — a 'challenge' in any context but pronounced in this case as it is of marginal concern for buyers from Korean and Japanese markets. For these reasons, the strike in Shwe Pyi Thar taking over the headlines caused much consternation among stakeholders keen to promote investment.

In sum, the striking workers experienced pressure from numerous fronts to end the strike after the first crackdown on 20 February. In the last week of February, 1,000 workers from E-Land remained on strike, with 150 having returned to work; 226 Costec workers remained on strike with 900 having returned to work; and 247 Ford Glory workers continued to strike, with 70 having returned to work.[19] Workers came and went from the protest site and the numbers were fluid on any given day. The striking workers endured many hardships in addition to the police crackdowns and harassment, including pressure from families whom many came to rely upon for reverse remittances, and a lack of means to earn a living, thus relying upon donations for food and other basic necessities from labour support organizations and the Shwe Pyi Thar community.

On the final day of the strike, 4 March, only some 100 workers from the factories remained at the protest site. An estimated 1,800 of nearly 3,000 employees at the three factories had returned to work. The majority of those remaining were from Costec and Ford Glory factories. E-Land signed an agreement to resume work on the same day, mediated by the Shwe Pyi Thar Township Conciliation Body. Among other provisions, the agreement stated there would be no discrimination against striking workers who returned to work and base pay would increase by a daily rate of Ks 550.

Those who remained on strike were met with a second police crackdown on 4 March. In the process, police apprehended 14 striking workers and activists and two journalists after a clash between workers, police and deputized civilian vigilantes — identifiable by their red armbands emblazoned with the word 'duty' in Burmese. The apprehended workers were initially charged with Article 146, which states that if force or violence is used by any member of an unlawful assembly, 'every member of such assembly is guilty of the offence', punishable by up to two years in prison, a fine, or both. While a majority were released, five were sentenced to two years imprisonment under Article 505(b), which provides imprisonment for anyone making, publishing or circulating information which may cause public fear or alarm, and which may incite people to commit offences 'against the State or against public tranquillity'. The five are labour activists Ko Sai, Thuzaw Kyi Win and Naing Zaw Kyi Win, and E-Land and Ford Glory worker-activists Myo Min Min and Naing Htay Lwin.[20] On 6 March, Costec and

19 Interview, labour rights activist, Yangon, 7 March 2015.

20 All five activists were released in April 2016 on a Presidential pardon.

Ford Glory workers returned to work, reportedly for fear of 505(b) charges, and pressure from their families. None of their demands had been met.

There are numerous ongoing issues arising from the strike. In the ensuing months, E-Land changed their name to New KMC Apparel Company Ltd. and made new contracts with workers, thus nullifying any gains resulting from the collective agreement of 4 March. Management has said the change is in accordance with a new law to make standard contracts. Furthermore, the company has eliminated seniority (pay) privileges. So, every worker is now considered in the first year of employment. Fifteen labour leaders resisted and have refused to sign the new contract. At Costec, more than 150 workers were dismissed during the strike process and aftermath. They are still calling for reinstatement and a lawsuit is ongoing.

Conclusion

We have argued that the emerging labour regime in Myanmar's export garment sector constitutes a nascent hegemonic regulatory assemblage shaped by forces and actors at multiple scales. This assemblage involves a mix of consent-seeking discourses and labour-relations practices, including social dialogue, labour law reform, and the legalization of workers' institutional representatives, alongside coercive measures like the violent implementation of repressive colonial-era laws. Discursive norms centred on building a 'clean' image for garment manufacturing have been introduced, contributing to a changing capital accumulation strategy in the sector. These relations are varyingly scaled, perhaps most prominently in the Myanmar context through 'opening' to Western markets and investors and with them the discursive introduction of CSR and other norms and development practices. These engagements are predicated on transforming state–labour and state–society relations, namely the realization of citizen-based rights after a half-century of authoritarianism.

This pursuit of workers' consent at the scale of the nation — through national trade union federations and discourses of national development — elicits the renewed centrality of the worker-citizen formation in developing world contexts. Yet through a case study at the Shwe Pyi Thar industrial zone, we have asserted that the hegemonic project is fraught, as workers' may, in word or deed, contest the terms of their insertion into industrial capitalism, as well as union and other actors' efforts to scale-up the workplace into national social dialogue that contributes to notions of 'globalization with a human face'. This rejection challenges the normative assertion that workers should make 'short term' livelihood sacrifices for long-term national economic development planning — thus 'flattening' the scalar register of social and political action.

While the strike ended in few-to-no demands being met, and several activists were sentenced to prison, the process sheds light on both the multi-scalar labour regime emerging in Yangon's industrial zones and the forms of agency practised by workers employed therein.

Authoritarian tendencies are alive and well in and around Myanmar's industrial zones. In this context, workers do not expect the state to act as a neutral arbiter of capital–labour relations, and the interests of trade union federations are perceived as removed from workers' urgent livelihood concerns. This points to the necessity to rethink and reaffirm the significance of labour and class in understanding Myanmar's transformation, particularly the implications of superimposing liberal-democratic labour politics and development hierarchies over deeply rooted authoritarian-coercive tendencies. This unanswered question has wide-ranging implications for possibilities and challenges for emancipatory struggles and social transformation in late developing, authoritarian contexts.

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CHAPTER FIVE

The Struggle for Gender Equality and Inclusive Labour Activism on Thailand's Eastern Seaboard

by KRIANGSAK TEERAKOWITKAJORN

Introduction

Judy Darcy, the president of the Canadian Union of Public Employees (CUPE) remarks that what we know the least about unions is how unionism enriches the lives of activists (Briskin and McDormott, 1993). Darcy also asks a burning question, concerned specifically with women's lives: 'Can you be a union activist and still have a personal life?' (Briskin and McDormott, 1993: *X*). This question, posed by a female union leader in the global North, finds surprising resonance with Thai union activists who are struggling to strike a balance between their personal and political lives. Through my field research on Thailand's Eastern seaboard between 2015 and 2016, I participated in strategic meetings, social activities, as well as the daily lives of Thai union activists in the Eastern Labour Relations Group (ELRG). The Eastern Labour Relations Group (ELRG) is an independent group working to promote educational and social activities for labour unions on Thailand's Eastern seaboard. At the time, it consisted of around thirty male-dominated labour unions producing for automobile and auto-parts manufacturers. With a few exceptions, men accounted for the majority of union executive committees, and they were disproportionately represented amongst the leadership.

This chapter focuses on the gender dynamics of worker-activists within the Thai labour movement. The first part of this chapter introduces the way in which labour activists, mostly men, socialize and plan their strategies. Then, my analyses shift from the inter-personal to the organizational level, addressing the intersection of gender dynamics with organizing approaches and constraints.

The next section addresses gendered and cultural spaces of activism, in which masculinity is reproduced through organizational practices that cultivate a certain notion of leadership. The last section focuses on women activists, their organizational and social challenges, and proposes the needed support in order to better negotiate within masculine spaces of activism as well as the gendered barriers they face outside of such spaces.

The empirical material in this chapter addresses two interrelated debates concerned with labour organizing within globalized capitalist production, and gendered geographies of labour activism. The first debate centres on the obstacles faced by women within male-dominated unionism, and thus the importance of women's organizing strategies. The second debate is on the militancy/ passivity of Third World workers and their relationships with place-based specificities.

Labour scholars and organizations have long recognized global trends of gender hierarchy and women's exclusion in mainstream male-dominated unionism (see Franzway, 1997; Pocock, 1997; ICFTU, 2003). In Asian trade union movements, women fare even worse than their Western counterparts (Broadbent and Ford, 2008). For example, local norms derived from religion and other belief systems, such as Confucianism, help to reinforce patriarchal power relations within already existing male-led unions in East Asian economies (Broadbent 2003; Moon and Broadbent 2008). In view of this, some scholars argue that alternative labour activism, namely non-union organizations (see Rowbotham and Mitter, 1994 for alternative labour activism within an international context; Ford 2001 for Indonesia), focusing on autonomous organizing through women-only organizations (see Briskin, 1999 for the Canadian context; Tshoedi, 2002 for South Africa; Broadbent and Ford, 2008 for Asia), was instrumental in overcoming women's exclusion and marginalization both inside and outside of unions.

This debate is closely related to the discussion on militancy and political quiescence of workers, especially with regard to Third World industrialization. Scholars writing in the late 1980s often depicted workers as passive and docile, by highlighting disciplinary structures including economic restructuring, political repression and cultural norms (see for example Deyo, 1989). However, scholars, mainly working under feminist and post-structural intellectual traditions, subsequently contended that female workers—especially those organizing in some of the most disciplinary places such as Special Economic Zones or Free Trade Zones—are just as militant as their male counterparts in the global North (e.g. Rosa, 1994; Koo, 2001; McKay, 2005). Since then, the debate has shifted to focusing on multiple scales of political economy (Kelly,

2001, 2009), workers' geographical agency and scalar strategies (Kelly, 2002; McKay, 2011), community-based organizations and social movement unionism (Rock, 2001), and place-based gendered norms (Silvey, 2003). The focus has thus shifted towards specificities of local conditions that promote or prohibit local labour activism.

In Thailand, given the control of the mainstream male-dominated labour movement, women workers, especially in feminized sectors, have succeeded in carving out political spaces for activism through autonomous and non-union organizing vehicles, such as forming labour-affiliated NGOs and participating in a broader movement (Mills, 2005; Brown and Chaytaweep, 2008). However, the feminization of the workforce in textile and garment industries has been disrupted as a result of the economic crisis and restructuring in the late 1990s, and further weakened by the subsequent decline of feminized industries. This chapter enriches the debate by examining an increasingly masculinized workforce within the new geography of automobile production – an emergent export-led industry replacing Thailand's so-called sunset industry (i.e. textile, garment and electronics). Rather than focusing on the abstract space of labour politics on a national scale, it emphasizes the ways in which masculine culture and gender dynamics within decision-making processes play out in the everyday, material spaces of organizing.

Good Morning, Brothers and Sisters!

In a meeting of several dozens of union representatives, a guest from a global union organization greeted participants during the opening ceremony by saying 'Good morning, brothers and sisters!' Looking around the room, he immediately corrected himself and said 'brothers and sister', as there was only one woman in the conference hall full of men. As a representative of the meeting's sponsoring organization, he proudly noted that one of the international events to be held by his organization would be on 'gender issues'. Then he finished his opening speech by encouraging the local network to increase women's participation, and expressing his hope of seeing more women at the next meeting.

This snippet, which was taken from my notes in a meeting of tire-producing unions, is not unique, but rather representative of the social relations that I observed during a year of research with a group of labour unions related to automobile industries, the Eastern Labour Relations Group (ELRG). One may argue that the lack of women in a meeting could be a result of mismanagement. However, it was also a product of larger organizational and structural issues. Moreover, the marginalization of women entails more than the number of women or quantitative aspects of the matter. It is primarily concerned with the exclusion

of women, very often unintentional, from the decision-making processes of the group, as well as the subtler forms of cultural domination over women. Such domination is normally rooted in already-existing prejudices in society. For example, in Thailand as in other countries, women are generally criticized for 'talking too much', 'gossiping', or 'being too consumerist'. Seeing women through this lens, male activists often dismiss their female counterparts as unfit for the serious business of labour activism. Therefore, it is crucial that male activists are aware of the representation of women within the executive committee or leadership. In the next section, by using a soccer league organized by the ELRG as an example, I show how the exclusive socialization of male activists alienated women counterparts and created conflicts within the group.

Labour Activisim, Gender and Organizational Constraints

The ELRG is an independent group working to promote educational and social activities for union members of the Thailand Confederation of Trade Unions (TCTU), which is a formal entity with around fifty workplace labour unions in the locale. Faced with low levels of organizing activities, in 2015 ELRG organizers promoted a soccer league to encourage more social interaction among its members, and cultivate a culture of solidarity.

In retrospect, the soccer league was not successful in promoting socialization or solidarity among workers because most union teams were too competitive and literally goal-oriented. There were incidents of quarrels, sometimes caused by the use of alcohol during matches, thereby defeating the purpose of cultivating solidarity. After the league, a conflict also broke out within the ELRG, when a female activist strongly criticized the organization of a retreat celebrating the end of the season. This woman member raised the issue of a conflict of interest, in which male activists organized the exclusive soccer league, and spent the ELRG's scant budget to celebrate their so-called 'hard work'. Unfortunately, the inclusiveness of the soccer activities was never openly debated, and her criticism was unfairly side-lined by the quip that she should have raised this issue in the planning meeting.

In fact, hers was the sole female voice in the ELRG. It was understandable as to why this woman did not dare to raise the issue of inclusivity during the planning session. One of the larger issues is that the ELRG meetings were usually held late in the evening, and women could not fully participate in the meetings. Over time, women felt more excluded from meetings and decision-making processes. The ELRG's dismissal of her concerns signals a cause and result of women's underrepresentation in the organization.

As suggested by Briskin and McDormott (1993), in the labour unions, barriers to women's activism include, for example, (1) the gender-bias inherent in unions, especially the notion that women identify themselves solely with the family, rather than work, (2) the stereotype that women are disinterested and passive, particularly when it comes to unionism, and (3) male dominated practices and union structures; for example decision-making while drinking, often in smoke-filled places (see Cuneo, 1993). The ELRG's soccer league exemplifies masculine practices that are created by a male-dominated structure. Since women's voices were not included in the decision-making process, the type of activity decided by the ELRG organizers was shaped mainly by male preferences. Although soccer is a popular sport in Thailand watched by both men and women, typically only men actively participate. Moreover, the ELRG soccer matches were organized on Saturdays and occasionally Sundays. Since the weekend is usually leisure time that workers spend with their families, participation in the events tapered off, over the course of the league. Finally, the original goals of promoting socialization and cultivating solidarity were not achieved. One may argue that the result may have been different if the male organizers did not plan for the socialization of workers from a limited—male—perspective.

In her study of a Latino/Latina union in Canada, Cynthia Cranford (2007) asserts that women staffers played a crucial role in challenging the gender inequality within a union. For example, in the case study of *Justice for Janitors*, women staff could recruit more women members, and develop leadership development programs appropriate to increasing women's leadership. They also expressed feminist values and realized the significance of women's representation in the success of union renewal. Within the male-dominated ELRG, the feminist value raised by the sole woman member of ELRG was inclusiveness. Inclusiveness means that different needs and demands are reflected in the ways organization grow and move toward. However, one voice was not loud enough to be heard. This example points to another issue; that labour movements and groups often struggle with creating more inclusive and gender-equal structures.

Cranford (2007) also highlights the challenges of gender inequality in the larger setting of a labour movement seeded in and cultivated by smaller groups. This is a crucial point. Women's underrepresentation in individual unions reflects a lack of women's voices in larger groups such as the ELRG. For the ELRG union members, men accounted for a majority in the executive committees, with a few women typically assigned token positions such as treasurer. For example, in one workplace union, all fifteen executive committee members but one were men. For this labour union, it had become a tradition for the employer to fund an annual leisure retreat for union members. At the annual retreat I attended, the main

event was a dance party in which participants could dine and dance on a floating raft towed by a boat in the middle of the canal. This was the second year that the union executive committee organized a leisure retreat at this fishing resort with one of the advertised highlights being female professional club dancers, hired by the union to please male members. Such extreme masculinity was explicitly displayed on the banner of the event, with images of female dancers placed under the official seal of the union.

In the case of this union, the choice to invite female dancers was purportedly guided by the dictates of the source of budget funding, the employer. As the employer used the number of members as the prime indicator for the retreat's success, the union was pressured to maximize the participation of members in the retreat. First, since all but one member of the executive committee were men, their decision was based on male preferences. To balance out the male audience targeted by the female dancers, the union executive committee decided to give away gold necklaces in a lottery, as an incentive for women members.

For the ELRG, one of the reasons for organizing the soccer league was to arrange training sessions based on social security law along with each soccer match, for the players and workers participating. Doing this enabled the ELRG to get funding allocated by the National Social Security Office (NSSO), according to the number of workers attending the training. These funds had been one of the main sources of income for the TCTU, as it was for other labour confederations in Thailand. Such reliance on public funding has been a target of strong criticism from some activists in the Thai labour movement, who view labour confederations as a compromised form of labour organization within the state-controlled tripartite system. By contrast, independent activists – mostly women organizing in the light industries – prefer autonomous forms of organization, often linked to and supported by non-governmental organizations. Refusing to rely on union membership dues, ELRG had no sustainable alternative, other than tapping the social security fund.

In fact, labour union congresses in other Southeast Asian countries, which represent labour in the state-controlled tripartite system, have faced similar criticism. For instance, the Trade Union Congress of the Philippines has been labeled a 'yellow union' by other labour organizations (Rosa, 1994, p. 90) while the Malaysian Trade Union Congress was also condemned for its lack of women's participation, and 'lack of democracy, bureaucracy, …and even corruption' (Grace, 1990, p. 46 cited by Rosa, 1994, p. 89).

While organizational approaches and gender inequality are separate issues, they are deeply intertwined. Male-dominated labour groups tend to prefer a certain set of strategies over others, and such strategies are likely to—albeit

unintentionally—alienate women. In this purview, it is important that labour activists be aware of both the choices they make, and the way in which these choices are made. Conceptually, paying closer attention to how decision-making is usually made in the union hall takes us away from the typical and unhelpful debates about the militancy of labour unions. Most importantly, the more inclusive and democratic the processes are, the more effective the strategies. Such effectiveness means solid membership bases and long-term development of the labour organization itself. This internal strength is critical to organizational resilience, a decisive quality conducive to the long-term struggle against capital.

Choices regarding strategies are not only shaped by gender prejudices and organizational constraints. They are also structured by the political economy of industrial relations as well as socio-cultural practices. In the next section, I illustrate how the majority of Thai union activists and workers respond to such structures, first, through their ideas and practices of leadership. Then, the following section shows how gendered leadership led to the making of ELRG as a masculine activist space.

Masculinity, Perceived Leadership and Labour-Relations Politics

Western scholars have long discussed the relationship between masculinity and manual work (Aronowitz, 1973; Turkel, 1975). In the Thai context, operational workers often associate certain aspects of masculinity with valued qualities of leaders. For example, Thai workers often suggested that the desired characteristics of leaders included an ability to speak in public, self-confidence and boldness – qualities associated more with men. In practice, activists tended to prioritize such qualities at the expense of other characteristics such as caring and sensitivity to personal relations.

It is fair to say that outspokenness and militancy are qualities sought out and prioritized by the Thai rank-and-file. In a working environment where labour rights are respected only when called for, it is understandable that workers feel obliged to prefer outspoken and unrelenting leaders. As such qualities were too often found in men, men were naturally perceived to be better than women for the leading positions such as the president and secretary. Through my conversations with the rank-and-file, workers often explained that they chose their leaders based on the fact that these activists could speak in public, especially in front of a big gathering of workers. Nevertheless, this way of choosing leaders does not guarantee the strength of the unions.

Advance Workers Union (a pseudonym) is an excellent case in point. At the time of my research, most of its executive committee members were women,

except for two leading positions: the president and the secretary. The Advance workers produced airbags and seats for cars, and the company hired more women than men because the work required sewing skills – skills viewed as specific to women. These workers were generally older women with lots of experiences in the textile and garment industry.

The secretary of the Advance Workers Union was a self-trained legal consultant, who took a distance college course in law during his own free time. His legal expertise was indispensable for the union activities. By contrast, the president was elected because he was a bold, self-confident man, who presented himself as a fighter. The executive committee members believed that these two complementary qualities were the perfect combination for the leadership. Yet, what happened was that the president was always absent from the Advance monthly meetings. Accounts from women committee members concurred that he did not like to attend the meetings, because, as he often complained, the women 'only gossip and talk nonsense.' In fact, it is worth noting that the president himself was frequently found in many different general meetings of other unions.

For Thai unions, a general meeting is normally an annual gathering of the members, where the new executive committee is elected, and the union's yearly budget is reviewed. Thai law requires that labour unions invite outside observers during the general meetings, in order to guarantee transparency and accountability. The executive committee members of the unions within ELRG then cultivated the tradition of being present and speaking at the general meetings of other unions. The general meetings had become opportunities to show solidarity among TCTU's union members.

For the host union, member participation in a general meeting is a good barometer of current members' support. For members themselves, the attendance of high profile guests and outside observers shows the extent of the union's social network. In a sense, the general meeting is a strategic site, where not only the union members and activists are present, but human resources officers from companies also attend. Moreover, the executive committee members anticipated the attendance of local government officers, who could be asked by the company to be there to ensure the legality of the procedure. The Thai Labour Relations Act requires that at least half of the members be present for the general meeting to be lawful. Thus, the vigour and energy brought about by outside observers – fellow activists – were crucial to boost the morale of the members, encouraging the newly elected committee to feel empowered and ready to start at full force. For many male union leaders, including the president of Advance Workers Union,

speaking at a general meeting was itself empowering and more appealing than 'listening to women's gossip.'

From my research, I found that the executive committee of several unions had rarely met with members outside of the collective bargaining agreement (CBA) season. Without any other activities, the union executive committee thus interacted with members only once a year during the general meeting. Knowing that they needed a show of force during annual CBA negotiations, the executive committee was compelled to elicit order and discipline from the members. However, as union executive committee members did not regularly interact with rank-and-file members, the union relied on charismatic leaders to control the crowd. But this practice was problematic. Take Advance Workers Union as an example. The executive committee of this union found that, without regular adequate organizing work, they gained less trust than they expected from rank-and-file members. Therefore, during the CBA negotiation, the executive committee members were faced with a dilemma; they felt that they were negotiating with the management on the one hand, and with the rank-and-file on the other. In fact, this type of three-way bargaining was observed in several other unions, and had become one of the main organizing challenges.

The Masculine Space of Organizing and Gender-Biased Empowerment

The member unions of the ELRG were familiar with a tradition of public demonstration called 'Hi Park' – a Thai appropriation of the English 'Hyde Park,' a place in London historically known for free speech. Hi Park in this case refers to a semi-public rally where activists address rank-and-file members of the union staging a protest. It is 'semi-public' because usually the gathering takes place in front of the factory, a grey area which lies between private and public space. The idea of the public-private divide in the industrial estates is somewhat problematic because the 'public' space is still privately owned. As the areas outside the factory belong to the industrial estates, these spaces are subject to close surveillance techniques of officials, such as photographing as well as incrimination.

For the ELRG leaders and organizers, Hi Park is a real test of leadership. A well-known activist, who prided himself for his militant activism against a giant American car manufacturer on the Eastern seaboard, once revealed to me that he used to be so scared of Hi Park speaking that he often pretended to be on his mobile phone to avoid being called to the microphone. Hi Park is nerve-racking because speakers are generally expected to 'lead the crowd' – a well-regarded skill to which many union executive committee members and

rank-and-file members repeatedly referred. Nevertheless, it is both challenging and rewarding. On the one hand, it is empowering to be able to communicate with and be answered by a crowd of rousing workers. Hi Park is also a chance to educate the rank-and-file workers about the general labour situation or specific topics such as subcontracting.

To master public speaking, activists need a great deal of practice and support. However, this kind of support is generally absent for young activists, especially women. In fact, the core ELRG organizers – who were mostly male – had regularly benefited from indirect training, through attending public seminars and conferences organized by governments, NGOs, and a wider network of labour organizations. These events provided activists with the space in which they could learn about broader economic and political issues. They also gained confidence in how to carry themselves and present their organizations. Such spaces are extremely beneficial, but also highly contested. It is beneficial because it is a place where union activists are generally empowered through the experience of situating themselves in the larger network, presenting and framing their own grievances to others. In the international context, unions have used such 'extramural' activities to educate and prepare young activists while at the same time building ties with outside networks. For example, Turner (1995)'s study of Japanese unions facing the company bankruptcy crises in the 1980s documents how radical unions empowered the rank-and-file by organizing internal study groups as well as regularly sending members to external activities. In the Thai context, Mary Beth Mills (2005) shows how such a radical space became the breeding ground in which women activists around the Bangkok areas formed their subjectivities and identities through oppositional politics. It is imperative to acknowledge that the large network of NGOs working on labour rights in the Bangkok metropolitan area is generally absent on the Eastern seaboard. Given the limited space of oppositional politics, the ELRG is thus one of the rare empowering grounds in which unions prepare activists for activism.

For ELRG union activists who held positions as executive committee members in workplace unions, it was necessary to get permission from their employers to be able to participate in outside opportunities. The management often used this permission as leverage in the factory against union activists. During my research, there were just a few unions that had creatively inserted the right to education and training outside of workplace in the collective bargaining agreement. For example, the unions concretely specified the minimum days of paid absences per week in the CBA. Yet, workers still needed to negotiate with the management on an occasional basis, such as when the management required a certain number of days of advance notice to allow sufficient time for

management flexibility. However, as the TCTU was a legally recognized entity, its committee members generally faced less resistance when making requests to attend external seminars and training. But as most of the TCTU and the ELRG core activists were male workers, women activists had fewer opportunities for political education. Such lack of opportunities were compounded by the primary roles of women in household duties; despite this, male unionists usually the blamed women themselves for being disinterested and passive in learning.

From the women's perspective, such criticism of their lack of interest in self-education was unfair. The female union activists appreciated the chance to attend outside training and seminars just as much as the men did, but they were disproportionately faced with barriers, gendered, organizational, as well as geographical. Most of the women workers did not own a car, as most men did. Some of the married women had never learned how to drive a car. Therefore, without taking a holistic approach that accounts for the gender dynamics in activism as well as the place-based gender division of labour in the household, we may not fully grasp the complexity of the processes that lead to the marginalization of women. Rachel Silvey (2003) suggests that geographical research must pay particular attention to women's active roles and negotiations in the development of gender relations and spaces of activism, as well as community-scale specificity such as local religious beliefs on gender norms. Consequently, in the next section, I focus on women union activists and how they navigate the space and time of local activism, touching upon issues of gender division of labour on Thailand's Eastern seaboard.

De-gendering the Space of Activism

For several reasons, I found that it is much more difficult for women activists, especially for those in relationships, to participate fully in labour activism. Firstly, women workers found it hard to attend the ELRG or union meetings, especially in the evenings and on the weekends. The main reason was that women were still the main caretakers in the households, despite the fact that men and women equally played the role of breadwinner. It is also worth noting that the workers on Thailand's Eastern seaboard are mostly internal migrants from North-eastern Thailand. Workers generally sent their children back to their parents or relatives, thus relieving them of the everyday tasks related to childrearing. The women were still, however, the main providers of the labour of love and care for their children in these long-distance relationships. Women activists thus have to work hard both outside and inside their households. Some women activists said that only male activists could invest most of their time attending meetings and seminars, which were the only forms of self-education. Moreover, married

women, especially those whose husbands were not involved in activism, felt uncomfortable attending ELRG activities when the main organizers, who were all men, socialized by drinking alcohol in the evening.

Secondly, women could not travel long distances by themselves, particularly because they did not own a car, or did not have a driving skill. A woman activist explained to me once that there were generally less women organizers and union committee members on Thailand's Eastern seaboard because 'women cannot drive [a car], and that their husbands would not like it if they were to drive.' Among four women executive committee members participating in the focus group, only one woman owned a car, while the others only rode motorbikes. In another focus group interview with six women workers and one male worker, I asked participants to draw a mental map of their everyday life. From the exercise, it was clear that the male union activist had a much broader scope of geographical mobility, and thus more geographical knowledge than the women activists. While the male activist frequented local government offices and conference halls in neighbouring provinces, the women were more accustomed to local markets, supermarkets and supply stores. In fact, the difference in mobility between men and women was significant, and largely overlooked by the male organizers. As Mills (1999) argues, 'Mobility in space is perceived as a natural and valued characteristic for men, while women's bodies and their movement are subject to far greater restrictions (94).' Women workers have rather distinctive experiences regarding the way they navigate space and time, leading to distinction in preferences about the preferred time and place of the labour activism.

Given their roles in the households, as well as restricted mobility, women workers found themselves struggling to participate in the masculine labour activism. It is imperative for the male activists to be aware of such women's struggle and try to understand the roots of the problems. Additionally, it is important to highlight that Thai women organizers need a great deal of support from family and the community of union activists itself. From my research, I learned that most of the active women leaders and activists were single, divorced, or living separately from their husbands. To a lesser extent, some women were lucky to have understanding partners who supported them. In other words, most women still have to choose either a personal or an activist life, whereas men have the privilege of enjoying both. It may be true that one's loss is always another's gain, but women's struggle is a struggle for all. Women's marginalization undermines the strength of the labour movement as a whole. In order to change this situation, men have no choice but to lose some of their privileges and share the power with their women counterparts.

Conclusion

Labour activism on Thailand's Eastern seaboard is deeply gendered. As the chapter illustrates, a recently masculinized labour force has had profound impacts on gender relations within labour activism. Norms of masculinity have shaped the way in which labour activists socialize, strategize, as well as understand collective notions of leadership. In such masculinized activism, male activists unwittingly promote sexist practices and reproduce gender prejudices, further marginalizing minority voices that raise feminist values of inclusiveness. This chapter has also emphasized the intersection of the marginalization of women and organizational and political formations. Although masculinized activism sometimes appears as militant, the underrepresentation of women workers undermines organizational resilience, leading to internal weaknesses in the long run. This chapter highlights the need to understand women's experiences in navigating the time and space of everyday life, and thus their distinctive preferences. The differences between male and female activists are inextricably linked to the social norms and expectations of women that stratify the gender division of labour.

By bridging studies of organizational strength with a gender perspective, this chapter points to the contradictory processes of gender and labour-relations politics in shaping collective agency in labour activism. It is crucial that labour activists in male-dominated unions understand the gender dynamics within their organizations, as well as the marginalization of women workers reproduced by organizing practices. By creating the conditions that support women's empowerment, union activists can promote gender equality and inclusiveness within their organizations. For labour unions and movements, such values can give rise to internal strength and organizational resilience–qualities much needed in the long-term struggle against capital.

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CHAPTER SIX

Living Wage Campaign and Seeds of Radical Transformation in Cambodia

by ATHIT KONG & LIANA DALTON

Introduction

The garment industry has been the chief engine of the Cambodian economy for the past two decades since its establishment in 1994. However, garment workers still account for a large part of the country's working poor. The minimum wage for garment workers has been rising slower than productivity increases and the price of certain daily necessities, thereby yielding negative real wage increases. Workers were universally unhappy with their quality of life in general and the minimum wage in particular.

This chapter discusses the strategy and implementation of the campaign by Cambodian garment workers in the latter part of 2014, to win an increase in the minimum wage in the garment sector.

About the Campaign

The atmosphere was electric and a sea of orange greeted us as we approached the factory just as thousands of workers poured out of the gate on their lunch break wearing the 'We Need 177' T-shirts and stickers. They unfurled large banners targeting the large apparel brands with phrases like 'H&M Starves Cambodian Workers' and 'We Need $177', and began chanting:

> 'What do we want? $177!
> How will we win it? Solidarity! Solidarity!
> How will we win it? Resist! Resist! Resist!'

Workers conducted similar actions at around 130 factories throughout Cambodia. September 17, 2014 marked the public launch of a comprehensive national and international wage campaign targeting the major apparel brands sourcing from Cambodia.

The demands of the union coalition were simple: that the brands negotiate legally binding collective bargaining agreements with unions where they guarantee a minimum wage of at least $177 to workers in their supplier factories in Cambodia, agree to increase the price they pay the factories to reflect this increase, and make a long-term commitment to source from factories in Cambodia where workers' rights are respected. In preparation for the public launch, we trained thousands of activists in many different geographic areas about the global economy, root causes of low wages, organizing skills, and our plan of action in order to build consciousness, militancy and discipline. These activists in turn educated and mobilized around 100,000 of their co-workers.

In parallel with the national action plan, C.CAWDU and the coalition called on unions and supporters throughout the world to show solidarity, especially workers within the global value chains of the multi-national brands. There were protests outside of brand retail stores in 37 cities in 15 countries, and some workers within the supply chains of the brands wore the campaign stickers to work to show their support and pressure the companies. September 17 was followed by additional protests by garment workers at the brand offices in Phnom Penh, and many local unions continued the lunchtime actions on a regular basis.

Although we have yet to realize the demand that the brands negotiate legally binding agreements with Cambodian unions, this campaign yielded an unprecedented 28 per cent increase in the minimum wage for all garment workers in Cambodia (from $100 per month to $128 per month base wage). This increase was implemented in January 2015 and workers received their first pay checks with the increase on Feb 10, 2015.

Context Analysis and Correlation of Forces When We Started Designing the Campaign

2013 and 2014 proved very active years for worker struggle in Cambodia, especially related to the struggle to increase the minimum wage. After the violent crackdown by the government against minimum wage strikers in early 2014 in which 4 unarmed people were shot and killed by the military and 23 people were arrested (AMRC, 2014), independent unions were faced with a situation in which garment workers continued to suffer from poverty wages, political tensions

were high, and the crackdown had instilled fear in many workers. Freedom of Assembly was still technically banned by the government but unions and other civil society organizations continued to defy this ban.

There was essentially a deadlock regarding a minimum wage increase and the $160 demand from the December 2013 to January 2014 strike, which was very political because the ruling party associated this demand with the opposition. GMAC opposed a minimum wage increase and was running a fear campaign that the buyers would all pull out of Cambodia and the factories would close if the minimum wage increased. GMAC successfully united the majority of garment factory owners to take a strong position against an increase. The government also opposed a minimum wage increase fearing such an increase would embolden other sectors, including civil servants, to demand a minimum wage. The government was very sensitive to anything that challenged, or could be perceived to challenge, its power. The fear amongst workers was also a significant factor, especially in Canadia Zone and Veng Sreng Road where the January crackdown occurred. Many workers stated that they were afraid to join demonstrations or that their family members pressured them not to join demonstrations for fear of their safety. Even a number of C.CAWDU activists experienced a lot of fear from family members.

C.CAWDU knows from experience that the core piece of any campaign is the grassroots worker action. Without strong mass action on the factory floor and communities, campaigns will ultimately fail. C.CAWDU had a total of more than 60,000 members in approximately 20 geographic locations, concentrated in Phnom Penh and the surrounding areas. We also had some density within the suppliers of a number of key brands: namely H&M, C&A, Gap, M&S, Inditex, and Adidas and thus could impact their production in the event of a strike. A tenuous coalition existed between roughly eight unions (C.CAWDU, NIFTUC, CATU, FTUWKC, CUMW, WFUF, IDYTU and NTUC) who all wanted to see an increase in the minimum wage. This coalition included pro-government, pro-opposition, and independent federations, but this was purely a tactical coalition and there was still a lack of deep strategic collaboration. Some Cambodian civil society groups were supportive but many of them were not very active. The groups that did lend support in addition to C.CAWDU include: CLC, the coalition union federations, CCU, WIC, CLEC, CCHR, Licadho, Adhoc, and ACILS. On the international level, C.CAWDU had a strong and growing international alliance with unions and other organizations who care about the Cambodian minimum wage struggle, especially after the international campaign C.CAWDU conducted against the January crackdown and to free the 23 detainees.

Multi-national Brands as the Principal Employer

The nature of the global garment industry is such that in reality, the multi-national brands are the principal employer of garment workers. They determine production locations, production levels, and also set the prices. If you look at the profit distribution throughout the supply chain, it is the multi-national brands and retailers that make the vast majority of profits from the exploitation of Cambodian and other garment workers around the world. As you can see in the chart below, in 2013, H&M, the largest buyer in Cambodia, made net profits of $2.4 billion, Inditex $3.3 billion, and Gap $1.28 billion. This wealth was

Table 1. Brands Net Profit 2013

COMPANY	PROFIT (2013 NET INCOME)
WalMart	$16 billion[i]
Inditex	$3.3 billion[ii]
H&M	$2.4 billion[iii]
Adidas	$102 million[iv]
Gap	$1.28 billion[v]

i Forbes.com, 2016.
ii BBC News, 2015.
iii About.hm.com, 2015.
iv Marketwatch.com, 2015.
v Gapinc.com, 2016.

Table 2. Wealth of Brand Owners

COMPANY	OWNER(S)	RANK	OWNER'S NET WORTH
Inditex	Amancio Ortega	4th Richest Person in the world	$63.7 billion[vi]
H&M	Stefan Persson	16th Richest Person in the world	$32.6 billion[vii]
WalMart	Walton Family	1st Richest American family	$152 billion[viii]
Gap	Fischer Family	22nd Richest American family	$10.2 billion[ix]
Levis	Haas Family	136th Richest American family	$1.6 billion[x]

vi Forbes.com, 2015a.
vii Forbes.com, 2015b.
viii Forbes.com, 2015c.
ix Forbes.com, 2015d.
x Forbes.com, 2015e.

created by the toil of Cambodian and other garment workers around the world, and yet these workers struggle to provide even the basic needs for their families. C.CAWDU explained to the workers that they really have three bosses: the factory owner in Cambodia, the parent company owner (typically in Hong Kong, Korea, Taiwan, China, Malaysia, etc.) and the brands (typically in US or Europe) and that a successful campaign must recognize these relationships and put pressure at all levels, especially on those who have real decision making power.

Building Solidarity in the Global Value Chain

Given the view that the brands are the principle employer, the solidarity of workers within global garment value chains was a fundamental aspect of this campaign and one which we wish to build upon in the future. Brands try to hide behind layers of outsourcing and subcontracting, as well as CSR initiatives to evade direct accountability to production workers. The current regime of CSR and auditing displaces the direct relationship between workers and brands, and brands try to distinguish themselves as 'socially responsible' or the 'good buyers'. Such schemes attempt to soften and mask the reality – the reality that the global garment industry systematically replicates imperialist power structures and exploits workers around the world for the sole purpose of creating profit; the reality that the capitalist system is irrevocably anti-worker.

Traditional brand campaigns are often criticized because they prioritize the consumer-capitalist relationship and thereby de-emphasize the role of workers at the grassroots level and the systemic flaws in capitalism. Chang and Wong (2005) explain that,

> 'Ingrained in the leverage argument around "buying power", the battlefield has been displaced from workplaces in developing countries to the media and trade institutions in developed countries.'

They later go on to say

> 'The consumer movement is a moment within an alliance that is to be placed at the level second to local, national and regional solidarity building. The consumer movement itself is not wrong, but the encroachment of a particular campaign strategy of the consumer movement into the labour movement risks creating divisions and displacing the working class movement of which the consumer campaign should be a part.' (Chang and Wong, 2005)

In the traditional brand campaign model, we often neglect the important solidarity relationships within the global value chain. Even if the campaign

is grassroots driven in the sense that the particular factory-level union or an active group of workers is dictating the demands and strategy, in the long-term, campaign models which prioritize consumer solidarity without first building solidarity between workers locally and regionally, risk ultimately de-politicizing the campaign, replicating the imperialist power structures of global capitalism and ingraining workers' dependence on first-world buyers rather than building stronger worker to worker solidarity.

This also means that we need to radically challenge the dominant mentality of the mainstream labour movement. We need to replace the mentality of unions in developed countries giving charity, or development support to unions in developing countries with a commitment to building genuine working-class solidarity. Garment workers in Cambodia can easily recognize that their struggle is inextricably linked with the struggle of garment workers in Bangladesh or Indonesia but it is also important that we are talking with retail or distribution workers in Europe or the US about that same vision. Solidarity is a two-way street. Cambodian workers have a lot to contribute to the struggles of US or European workers as well.

The pertinent question for unionists and labour activists is thus, how do we structure our campaigns such that we prioritize building worker power and working class consciousness on the local and regional levels while still taking advantage of international leverage points in a transformative fashion? In an attempt to address this point, this campaign sought to prioritize workers as the primary actors not only by prioritizing the grassroots education and action components but also by pushing for workers within garment supply chains to be the main agents of the international campaign.

The framing of this campaign was thus very important. This was not a traditional name-and-shame consumer campaign. Workers in the global value chains of these multi-national companies were the principal actors with support from other campaign groups. Global value chain solidarity prioritizes the labour-capitalist relationship in a way that challenges transnational capital but also affords opportunities for workers themselves to take advantage of what we traditionally think of as 'consumer leverage' (e.g. protesting retail stores or brand offices) to advance their campaign. Workers in Levi and H&M distribution centres, for example, wore the $177 stickers to work using their own collective action to show solidarity with Cambodian workers, to exert pressure. Many of the store actions were also organized by workers.

The campaign provided a huge opportunity to politicize and build the class consciousness of thousands of workers. C.CAWDU activists were shocked when the leaders presented the massive profits of transnational apparel brands but it

was not hard for them to understand the systemic nature of the exploitation – they live it every day. When asked about the current global economic system and whether it is fair, the answer was a resounding 'no!' When presented with the chart of brand profits in the training, one local C.CAWDU leader said

> 'I had no idea about the massive profits of the brands I sew clothes for but now that I know I want to share this with all my co-workers so they can all understand this reality.'

Supply chain workers who participated were also deeply impacted and politicized through this campaign. Jeff Hermanson, the Director of Global Strategies for the US garment union, Workers United, emphasized how this campaign was a transformative process for their members who participated as well, many of whom are immigrants from the global south themselves. The demand that the brands, as the principal employers, negotiate legally binding agreements directly with national and grassroots unions, directly challenges the labour flexibilization scheme of outsourcing, helps build worker power vis á vis these TNCs, and allows unionized workers to drive the campaign.

General Campaign Objectives

The leadership of C.CAWDU worked with the eight-union coalition to develop a clear proposal for the campaign. In this proposal, we articulated the following core objectives:

1. Conduct a successful Cambodian Minimum Wage campaign on the local, national and international level;
2. Minimum wage for garment workers will increase to $177 USD in 2014;
3. Build unity of workers, activists and unions for a joint Minimum Wage struggle;
4. Build strong activists and leaders with enhanced capacity to train others;
5. Build the consciousness of workers in the geographic target areas and build new contacts in expansion areas;
6. Improve the strength and discipline of the Cambodian union movement;
7. Change the power relations between brands and workers in their supply chain and force the brands to negotiate directly with Cambodian unions.

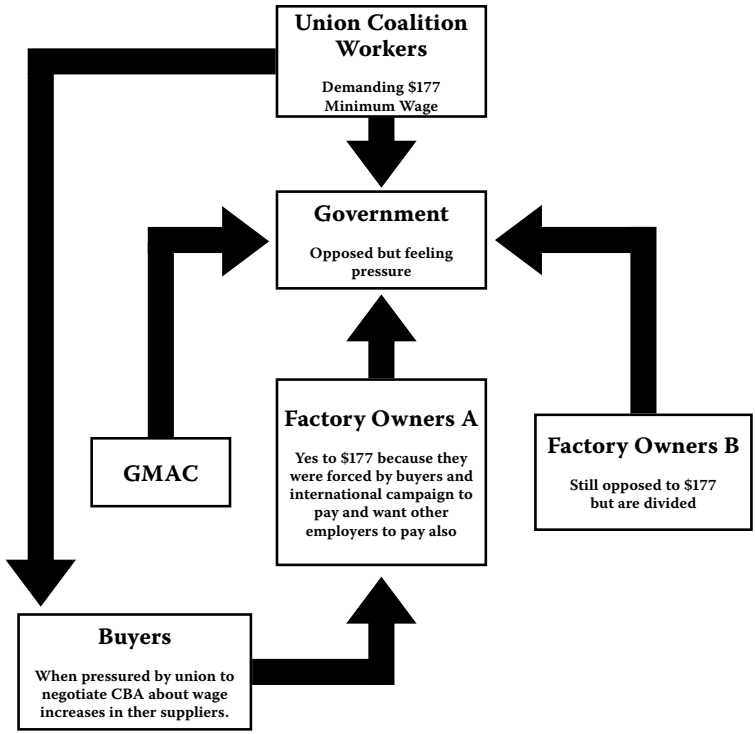
Strategy of the Campaign

As we described above, it is important to conduct a power analysis before choosing the targets and strategic formation of the campaign. Mark Anner describes the concept of a 'triangle of power' arguing that a successful campaign in the garment industry must exert pressure on all three actors, namely: the brands, suppliers, and the state (Anner, 2011). Given the analysis of the correlation of forces detailed above, C.CAWDU decided to employ a combination of direct confrontation and divide-and-conquer strategy formations within this campaign. The basic concept was that in order to break the impasse in negotiations between the unions and the government, the unions would apply direct pressure to some of the top multi-national brands producing in Cambodia to negotiate legally binding agreements with Cambodian unions. The brands in turn would pressure their suppliers to implement the higher wage, thereby breaking GMAC's united front by creating two groups of suppliers: those who agree to pay the higher wage in order to achieve steady orders from the brands, and those who still oppose it. The schematic below illustrates the basic concept where the red is worker pressure, the green are capitalists, whom we force into a tactical alliance through pressure, and the black are those who remain opposed. We recognize of course that the reality is far more complex that what we describe. For example, even if we succeed in getting the brands to sign such an agreement, the suppliers still may not agree to implement it, but this is a case in point for Anner's analysis that only targeting one or two aspects of the triangle is insufficient. In this case, global value chain solidarity and direct action within the large manufacturing parent companies is also a key aspect of this strategy.

Action Plan and Escalation of Tactics

After designing the overarching strategy, C.CAWDU outlined a detailed action plan focused on worker education and building grassroots power. First, we conducted coalition meetings to get support and ideas for the campaign strategy, messaging, and action plan. We also had a good discussion of this at the C.CAWDU General Council meeting to get their input. We then had a 'train the trainers' meeting to build a core group of grassroots leaders to help implement the campaign and build the team of activists. This was also a chance to engage activists in the other federations. This 'train the trainers' aspect was very important in being able to effectively mobilize workers, and in developing the capacity of other key C.CAWDU local leaders, both in terms of their training skills but also their ability to run national level campaigns. These trainers in turn conducted training for a core group of activists in the strategic areas where C.CAWDU has local unions. C.CAWDU identified approximately 20 geographic

Figure 1. Strategy of the Campaign


Union Coalition Workers
Demanding $177 Minimum Wage
Government
Opposed but feeling pressure
GMAC
Factory Owners A
Yes to $177 because they were forced by buyers and international campaign to pay and want other employers to pay also
Factory Owners B
Still opposed to $177 but are divided
Buyers
When pressured by union to negotiate CBA about wage increases in ther suppliers.

areas and planned to train at least 1,000 activists. We started with our strongest areas, and some of those activists also helped in expanding to the areas where we have less of a presence.

After this extensive grassroots organizing program, we were ready to mobilize for the September 17th public launch. We also organized the international allies to conduct actions at the factories, distribution sites, stores and headquarters of the target companies. Following the launch, the coalition continued activities by having groups of around 100 workers deliver the demand letters to the brand offices and stores in Phnom Penh. Many of the local unions also continued to conduct lunchtime actions once or twice a week. Another key aspect was expansion training. The expansion areas were chosen to help build the union in new geographic locations, as well as in existing geographic locations but in factories that are strategic suppliers of the target brands but where C.CAWDU does not have unions. This action strategy was conducted concurrently with the national tripartite negotiation process.

Assessment on the Campaign

Looking back, there were a number of strengths of this campaign, especially in terms of the grassroots organizing. The systematic preparatory training of activists helped build workers' consciousness, leadership and overall excitement for the campaign. In fact, many local union leaders and activists were so inspired by the campaign strategy that they went above and beyond the initial plan provided by the federation. Because of limited resources we originally planned to only make T-shirts for the 1500 activists but many workers pooled their money and we ended up getting more than 10,000. Many local unions also did 'practice actions' before the campaign launch, which created buzz, built momentum, and worried the companies. The peaceful, disciplined actions that everyone carried out on September 17th helped embolden scared workers, especially in the areas where the January 2014 crackdown took place, such as Canadia, Veng Sreng Road, and Yakjin. We feel proud to have met almost all the initial goals we set out in terms of number of activists trained, workers participating, etc. and are now in a good position to build more strength from here.

We also recognize a number of opportunities for improvement. As to be expected, within C.CAWDU the strong local unions had excellent member engagement and turnout for the actions but the weaker unions only reached a limited number of workers in their factories. There were missed opportunities to strategically use the campaign to set up detailed organizing programs to build membership and member participation in the weaker factories. Similarly, we should have been more coordinated on the expansion targets in each geographic region to direct the local activists in strategic contact building. It also would have been good for momentum if we had set another big action day a few weeks after September 17th. We attempted to do something on October 12th but this was not actualized due to challenges in coordination between the coalition members and differences of opinion on strategy. We also should have involved the leaders of the other CLC federation more in developing the strategy and organizing program because this would have been a good opportunity to train more people on designing a comprehensive sectoral and international campaign. Lastly, despite our attempts to not make this the case, too many of the international strategy conversations were focused more on Europe and the US, and we didn't prioritize the Asia regional solidarity strategy enough. Some of the key organizers within the Asia region mentioned that the timing was challenging for a number of the key Asian union allies and that it was harder to mobilize for this than, for example, against the crackdown in January because they perceived the latter as more urgent and egregious.

Ways Forward

We dream of bringing multi-national capital to the bargaining table through a truly transformative and militant campaign that involves workers in all aspects of the global value chain. We can learn from the Cambodian experience and work with other grassroots unions to conduct a similar campaign on a much larger scale. Imagine if hundreds of thousands of Cambodian garment workers built real solidarity with hundreds of thousands of Bangladeshi, Filipino, Indonesian etc. garment workers, logistics workers, and retail workers, and mobilized on the same day with the same collective demands on transnational capital. This would lead to some real change. Although we are still far from achieving the militant anti-imperialist transnational labour movement fighting for radical change that we dream of, we are most certainly planting the seeds. In the words of one local C.CAWDU leader:

> 'We have had their "development" model for the past 30 years and look where it has gotten us. Now is the time. We must build an alternative.'

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CHAPTER SEVEN

Dimensions of Institutionalizing Trade Union's Representational Role in Vietnam

by HUNG CHAU QUOC

Introduction

The Vietnam Trade Union currently puts a focus on organizing grassroots trade unions from the bottom-up, strengthening the upper workplace trade unions' support for the activities of the grassroots trade union. Since its foundation, the Vietnam General Confederation of Labour (VGCL) performed mainly socio-political functions under the leadership of the Communist Party to educate workers and masses of working class position and promote their participation into the administration of the country's economy. The recent stunning wildcat strikes have given a pressure to the government to reform the current union system in some of major issues, including worker representation, organizing, and collective bargaining.

This chapter discusses the challenges of the trade union movement in institutionalization of representational function, promotion of the participation of workers in trade union decision-making processes and organized resistance through engaging in social dialogue and bargaining with the management. Toward these goals, the efforts of the Vietnam Trade Union will drive innovations in the way of establishment, processes, stipulated conditions of organizing and selecting grass-root union committee; regulations to ensure that employers respect the trade union rights; the participation of trade union units in the decision making process of the grassroots trade unions; enhanced financial autonomy of the grass-roots trade union, the formulation of social dialogue mechanisms at the enterprise; conducting of enterprise-group collective bargaining; and engagement with state agencies of labour mediation in resolving complaints, denunciations

and labour disputes. As Vietnam's integration into the world economy becomes inevitable, the question arises as to how the Vietnam Trade Union will move on to deal with pressure in the predominant neoliberal context.

Characteristics of Vietnamese Institutions and Policies for Workers and Trade Unions

The Position and Role of Trade Unions in Vietnam

Historical Background

The Vietnam General Confederation of Labour (VGCL) was established in 1929 with its previous name the General Red Labour Union of Bac Ky. The union is a core force in the establishment of the Farmers and Workers aligned State, under the leadership of the Communist Party, representing the elite and vanguard of the working class to guide the people of Vietnam towards national liberation. The Constitution states clearly that the VGCL is an integral part of the state system in Vietnam. Article 10 of the Constitution also specifies the VGCL is the only trade union in Vietnam Organization and represents the whole working class in Vietnam, not limited to its members (Schweisshelm, 2014). During the planned economy period, the VGCL is considered as a means of propaganda by the state to mobilize workers to achieve the production targets of the society. In this context, the trade union was very strong in social movement activities, and in promoting the physical and spiritual life of workers. That is the premise that VGCL has inherited to date.

Entering the socialism oriented market economy since 1986, the pressures of competition forced many state-owned enterprises to equitization, though the state still possesses dominant shares in most cases. During this period, there is a close relationship between the Party, the Trade Union and the Enterprise Executive Board. Needless to say, the Vietnam Trade Union in this period cannot be separated from the leadership of the Party. This, on one hand, shows the Trade Union is strongly backed by the State policy, and on the other hand, the policy decisions and steps up in the union are subject to the priorities of the Vietnam Communist Party. The Trade Union is the extended arm of the Party; an important force of soft execution and dissemination of State policies towards workers and employments. The trade unions has a vital role in the state's formal political process to ensure that the state takes care of the interests of workers. A lot of trade union activities since the pre-reform period persist widely such as emulation and the solidarity movement, among others.

Today, with economic diversification of ownership, especially the rise of privatization of economic entities, the trade union faces the challenge of clarifying its representational function. This function is a key to deal with problems in the market economy in which capitalism prevails. Trade union representation has been performed under the framework of welfare policies, which is differentiated according to state priorities among different sectors and forms of ownerships. For example, two regulations co-exist on regional minimum wages for the state and private sector, including FDI. In fact, when FDI enterprises participate in the Vietnam labour market, the trade union role is more emphasised, especially at industrial parks. By 2010, the country had 250 industrial zones, of which 170 were in operation, attracting 3,500 FDI enterprises and 4,000 domestic enterprises, employing over 1.5 million workers.

The duty of the Trade Union in the new period is to ensure harmonious labour relations for sustainable growth of businesses and the creation of jobs for workers. It can be seen now that the union is a bridge between employers and workers in implementing state laws on labour and trade unions. So far, Vietnam has not ratified the ILO Convention 87 on Freedom of Association and Convention 98 on the right to form unions and bargain collectively. All organizing and representing activities must be put under the unique union which is the VGCL and its subordinates. In relationships with international trade union organization, the VGCL is a member of The World Federation of Trade Unions (WFTU), whilst its cooperation is not restricted to its affiliation, but also working with various global unions such as IndustriAll, UNI Global Union UNI), Building and Woodworkers International (BWI), and other unions affiliated to the International Trade Union Confederation (ITUC).

Policies toward Vietnam Trade Unions

The trade union in Vietnam, VGCL, has four levels of representation which covers the VGCL at the central, province and city, districts and townships, and the grassroots/workplace level. The VGCL puts emphasis on its activities at the workplace level. The number of grassroots trade unions in 2012 was 114,000.[1] In 2009, there were about 6.75 million members, going up to 7.94 million in 2012, an increase of 1.19 million in just three years (Serrano et al., 2013: 151). The 11th Congress of VGCL has set its organizing targets by 2018 at achieving 10 million members, in which 90 per cent of enterprises with 30 workers or more will have grassroots trade unions established.

1 Report of 11th Congress of VGCL.

However, the effectiveness of trade union activities at the workplace is not yet strong as the longstanding policies of VGCL focus on increasing the number of trade unions but not essentially on the quality of representation. Under the regulations since 2003 to 2012, after 6 months of coming into operation, a business owner must have his enterprise trade union established[2]. However, the current law lacks regulations binding the election of a trade union executive board and president to include candidates who are workers directly involved in the production line and conditions for participation of high-ranked officials in the enterprise to become union leaders. On the other hand, the stipulation that a union can only be permitted to be organized from a single enterprise, makes it difficult to protect workers in numerous small and medium enterprises, whose scale is smaller than 10 workers.

Currently, the Vietnam trade union is improving their better representational role in industrial relations. Unlike other countries, the Vietnam Trade Union pays great attention at the Central and grassroots level, at the expense of the branch level. This is reflected in the number of National Branch Trade Unions which are few in contrast to the expansion of economic sectors. The existing ones function in a very insubstantial manner with their major role of advising the State on building branch macro policies rather than representing and gathering their members to enhance their bargaining powers. The most successful central institutions in industrial relations are the National Wage Council with the participation of the VGCL as substantive negotiating parties on the matter of the minimum wage applicable to the whole country.

In addition to union membership fees, the Vietnam trade union law stipulates specifically on the duties of businesses to pay an amount equal to 2 per cent of the annual wages fund to so-called trade union funds. This caused some controversial debates on whether the trade union could perform its substantive function when its fund is heavily sourced from the management's budget. However, in England, an employer must also pay wages for full-time union officials in his business, while China also has similar provisions in the trade union funds paid by the employers. By and large, this promises substantive financial resources for union activities.

Currently, the grassroots labour union is authorized to use 65 per cent of the total trade union funds, 60 per cent of total trade union membership fees, and 100 per cent of other income from the Union[3] (Article 6, Decision No 270 QD-TLD). Nonetheless, effective use of trade union funds requires many additional

2 Decree 98/2014 ND- CP

3 Decision No. 270 / QD-TLD On Promulgating the Regulations on decentralisation of collection and distribution of trade unions' financial revenues

policies. In fact, expenditures for administrative costs and welfare activities accounted for almost 65 per cent of the total trade union budgets. Within the rest of the fee, it is very difficult to implement union professional capacity building, organizing activities, payments and allowances for fulltime officials if required.

On the other hand, if the question of trade unions in other countries is how to compete in encouraging members to gather funds, it is in Vietnam where trade unions face the question of how it could collect funds as the workers would obviously join the only trade union. Currently, the trade union lacks competencies and sanctions to compel enterprises to fulfil their obligations of payments for trade union funds. It is widely found that many companies have just signed a tokenistic contract with workers under low wages in order to pay trade union funds at low rates. The payment rate against total wages funds differs vastly among businesses without any control. A lot of businesses evade the duty to pay this fee, especially small and medium enterprises.

The Vietnam Legislation on Labour and Trade Unions

The Socialist State and the Protection of Workers and Trade Unions under a market-driven economy

Due to the nature of socialism, the state's policies for workers are top priorities. Unlike other countries, where welfare services like education and healthcare are volatile in the neo-liberalist economy, which poses a great cost burden on businesses and workers, in Vietnam, these services have become protected and stipulated by the state laws, which serve as a prerequisite to establish an equitable order of social security for workers. The average wage of a Vietnamese worker is at around US$ 175 per month[4], which is not high, but fairly affordable for a basic cost of living and to avoid pressing hardships and needs. Annually the state adjustment of a regional minimum wage is an effective tool to increase wages for workers. Mass organizations like the Fatherland Front always show their role in caring for the physical and spiritual life of workers in harsh conditions. The presence of these organizations along with the state authorities, remains the fulcrum for workers in a strike. The press and the public offer a lot of tools to protect workers and working people. The state is also strengthening the labour inspection system down to district level to participate in industrial relations. On the other hand, an interventionist role of the state manifests in an administrative nature and cannot not keep up with the dynamic development of current industrial relations in Vietnam.

4 Interview, Vu Minh Tien, 10 July 2013.

Since the reforms in 1986 towards a Socialist-oriented market economy, the state's policies are aimed towards protection of the workers' legitimate rights and benefits, at the same time, they are focused on stability to attract foreign investors. In the period 2006–2011, there was an average of 21 per cent yearly increase in the number of enterprises. As of 31 December 2011, the fastest growing sector was the non-state sector, which posted an average yearly increase of 21.7 per cent in 2006–2011. Meanwhile, the FDI sector grew at an average of 16.4 per cent yearly in the same period. In contrast, the number of enterprises comprising the state-owned sector shrank at an average of 2.5 per cent yearly in 2006–2011. Meanwhile, the industry sector had the highest proportion of wage workers at 48 per cent in 2009 (Serrano et al., 2013: 140-48). The companies investing in Vietnam often benefit a lot from favourable policies such as tax cuts in return for promoting local employment and pouring investment into the local economies. Although the public shows concern for corporate problems of tax evasion and transfer pricing, their first priorities are given to creating jobs and businesses stability. In general, it is acknowledged that a strike is considered as a hazardous consequence of labour disputes that pose a great risk to labour relations and development of enterprises and socio-political stabilities that need to be addressed.

The workers' strike wave in 2011 presented an alarm bell for the transformation of industrial relations in Vietnam. The wave of strikes reached its first peak in 2008 with 762 strikes and after a short-lived decline, the number of strikes reached a new record of 981 in 2011. All these strikes were not actioned under the leadership of a trade union. This is obviously a major factor that presses the state to introduce important legal documents, such as directive No. 22 of the Central Party Committee that urges localities in formulating prioritised master plans to ensure harmonious industrial relations through promoting social dialogue and tripartite institutions.

The State found the increasing importance of prevention of disputes and the essential representation role of the trade union, rather than a single mass organization. This is to decrease the role of government in regulating matters within a workplace context, and to promote the autonomy of trade unions over their representation responsibilities. On the other hand, a strong union ensures higher commitment from workers, which is the premise for improving labour productivity, stability and quality of human resources, and long-term commitment from investors. The strengthened self-regulation and monitoring mechanism in collective bargaining and trade union governance require statutory efforts as a basis and pivot for more substantive representation of trade union.

The New Provision of the Law on Industrial Relations

Vietnam Labour Code 2012 has been marked by an important amendment in its requirements to force an enterprise owner to establish a grassroots trade union after 6 months of operation, and into assigning duties for immediate upper workplace trade unions to support the organizing of a grassroots trade union. This is to ensure a voluntary element of organizing activities rather than a formalised one as before.

Fundamental in Vietnamese law is considering a strike as a last resort consequence of an interest based or right based labour dispute, rather than an effective negotiating instrument of the collective labour. In fact, the delineation of disputes to be rights based or interest based remains unclear. If the 'rights based' factors are provisions in law or a collective agreement, the interest based factors, which only occur in the collective bargaining process, have not been clearly defined. However, while it is stipulated by law that a firm must file its collective bargaining agreement to the competent authorities, it is lacking clear provisions on what matters are to be covered or are not allowed in collective bargaining, as well as the rights and responsibilities of the parties in enforcing collective bargaining agreements and social dialogue documents. This has led to the management speeding up in producing collective agreements with terms that have little difference to those given by the laws. Consequently, there are very few new interests to be set as rights through collective bargaining.

There are also new rules in implementation of a social dialogue mechanism at a workplace, whereby enterprises are compelled to organize year-round dialogue activity with the trade unions[5]. It is a turning point of the law from forcing the parties to conclude collective labour agreements to a softer process of mutually organizing social dialogue. Mandatory dialogue is seen as a way to coerce two parties in industrial relations into the process of exchanging information and taking essential steps to prepare for collective bargaining. However, the regulations of dialogue are relatively stiff, such as the obligation of the employers into reporting openly about the business plans and annual financial reports of the enterprise to the workers,[6] or organizing annual convention, etc., in the absence of specific regulations on recognition of dialogue outcomes between two parties in key industrial relations process such as the CBA, despite important terms in the law that enforce both parties to organize regular dialogue every 3 months and ensure ad hoc dialogue.

5 Decree 60/2013/NĐ-CP on implementation of grassroots democracy mechanism at workplace

6 Article 6 Decree 60

During the dispute resolution process, the law also includes more specific terms about the role of a labour mediator in resolving disputes. In the Labour Code 2012, the workplace conciliation council; a bipartite mechanism in resolving disputes at the enterprise, is discarded in favour of use of a local mediator as an independent third party. The mediator is responsible for actively grasping the situation of labour relations at the enterprise, which is not limited to addressing denunciations and answering questions from conflicting parties and ensuring the commitment of workers and management upon their agreements. This regulation places a number of demands to be included in the law, such as stipulations to harmonise the effectiveness and objectivity/neutrality of the mediators. However, this could be difficult because many individuals who assume the role of mediator and have long experience in this expertise were trade union staffs, who are exposed the most to mediation cases for workers and management disputes in practice.

In 2012 the National Wages Council, a tripartite mechanism, was established to decide the annual regional minimum wage nationwide. The advent of the Council marks a significant transformation of the tripartite participation from the previous role of advisory for the state decisions of the minimum wage, to the current developed status as an authorised bargaining and voting mechanism to decide the minimum wage. This mechanism is institutionalised to operate throughout the year, in which each party performs independent studies and assessments on their views about the wage.

In this process, the involvement of the media in monitoring, posting the events of the national wage council, as well as promoting the voices of workers' representatives is very substantial. This model facilitates appreciable representation of the VGCL in giving their views on workers' wages. To make a comparison, whilst the minimum wage in another country is fixed to the lowest level of wage that exists in the market (after the negotiations have been conducted at subordinate levels); In Vietnam, the minimum wages should be implied as a recommendable level at least to subsequently start negotiations for a higher level. It is understandable that the institutionalization of the national wages council in Vietnam is a negotiation of enhanced potency by the state among parties in industrial relations.

Characteristics of the Vietnam Trade Union

The Gaps in Trade Union Activities in Vietnam

Gaps in Organizing and Recruiting Union Members (the Top-Down Approach)

As a conventional way of organization, after six months of an enterprise going into operation, the upper grassroots trade union officials will come to motivate business owners to establish a trade union. Under the facilitation of the employers on location and the time of organizing, the officials conduct propaganda and campaign for workers to voting on the initial interim executive board of trade union among those who are nominated by the business owners. The list of nominations often includes HR people and middle level management staff for election by workers to the position as chairman or member of the Executive Board of the Union. This leads to great concern that the established trade unions do not have substantive representation for workers, which sometimes enables the management to control union activities. However, it is a fact that an human resource manager or a director of a production line, when making decisions on behalf of the union, on the one hand may be easily influenced by the employer, on the other hand, these white collar workers prove to be capable of articulating and negotiating for workers' interests with employers in many cases.

In most businesses, the role of union president sometimes serves as a bridge between workers and management. The most appreciated union presidents by both sides is because of their capacity to speak with business owners, raise a sense of discipline among the collective workers, contribute to enhancement of productivity and promote compliance to state law. Together with enhanced consciousness by workers, these active roles of trade union presidents could gain effectiveness in negotiating and persuading business owners to support the workers' interests. Their style of negotiations is not confrontational, but more advisory of current law and policy implementation, and raising the needs of workers for adaptable changes within the business conditions.

In staffing practices, the transfer of trade union officials from part-time to full-time services or the promotion of good trade union officials upwards in the system challenge the Vietnam trade union into ensuring worthwhile compensation and career opportunities of grassroots trade union officials. Currently, it is the general policy that the union will pay wages for full-time union officials at the enterprises, and businesses owners must commit to ensuring his work position

after the expiration of the union term. However, to meet the salaries of union officials from the state budget or trade union fund seems challenging, as the wages they are getting when working for the employer is very high. This is not to mention that the focus on union activities and switching positions of workplace trade unions may affect their income as well as the chances of promotion in their professional careers, which concerns grassroots union officials the most. To the other end, some forms of work transfer in the name of 'promotion', to isolate part-time trade union from their roles and location, is a common practice of management to disable the union.

Low-Skilled and High Mobility Labour Force Affecting Representation, Dialogue, and Workplace Cooperation Activities of the Union

According to the German Business Association (2011) report, the rate of workers working in foreign invested enterprises that are able to read and understand their labour contract is only 54 per cent. The report also pointed out that more than 65 per cent of the total workforce in Vietnam was low-skilled, and more than 75 per cent of those aged 20–24 were either low-skilled or skill-trapped. The result of the 2011 Labour Force Survey in Vietnam indicated that of the 51.4 million workers aged 15 years and older, only 8 million or 15.6 per cent were able to attend technical training. Accordingly, 40 per cent of local companies and nearly 30 per cent of foreign companies said that the lack of training and skills of the workforce in Vietnam delayed production (Serrano et al., 143-45). This means that the execution of trade unions' activities in aspects such as collective bargaining and cooperation in the workplace is difficult, which requires more time and effort for implementation.

On the other hand, the unorganized informal labour market in Vietnam also contributes to the impairment of trade union representation function. In Vietnam, informal jobs comprise the largest employment at 81.6 per cent (Serrano et al., 2013: 152). Vietnamese workers, particularly female workers, have a number of options and priorities in joining the informal seasonal labour market, especially in agriculture, self-employment and the construction area. Another angle of the situation is the Vietnam workforce has highly mobility and a short-term thinking mind. Interviews with different business owners indicate that the peak of turnover rate is often after Lunar New Year days. This is because workers often wait until the end of the year to receive year-end bonuses before leaving for other jobs. This feature of the labour market affects habits, disciplinary and legal consciousness, and commitments of Vietnam's workers, which affect the negotiating power of the trade unions. On the other hand, high turnover rates of a highly mobile workforce create spaces for employers to

Table 1. Employment by Sector in Vietnam in 2009 (in per cent)

EMPLOYMENT	AGRICULTURE	INDUSTRY	SERVICE	TOTAL
Employer	33.4	25.6	41.0	100
Self-employed worker	63.3	8.3	28.4	100
Unpaid family worker	80.4	4.9	14.7	100
Wage worker	12.4	47.8	39.8	100
Member of cooperative	35.0	50.0	15.0	100
Others	0.0	48.4	51.6	100
Total	47.6	21.8	30.6	100

Source: LFS, (2009), 'Recent labour market performance in Vietnam'.

delay their improvement of wages and benefits, working conditions and creates pressing harsh production norms onto workers. This fact in the long term will produce negative impacts on productivity, and occupational skills and quality of the labour force, and will undermine the long-term commitment of investors in Vietnam, which presents great challenges for trade union efforts.

Unprotected Labour Dispatch Weakens Trade Unions

With an annual labour force entering the labour market, up to 1 million people and FDIs pouring into the country, the by-product of mobile working is the advent of a flexible labour dispatch[7] business. The subleasing practices, on one hand, benefit those who are having a hard time looking for jobs, on the other hand, they provide flexible employment options for companies who are looking for temporary or seasonal workers to accommodate variability in production demand. However, this leads to more complex labour migration and precarious employment, which causes difficulties in unions' protection for this group of workers. Along with similar wages to a regular worker of the user company who is doing the same job, agency hired dispatch labourers rarely receive any additional income or are paid a much lesser amount compared to what the permanent workers receive, such as bonuses that account for 30 per cent of total income and meal assistance (Serrano et al., 2013: 140-62). In addition, the workers are paid lower social insurance compared to what they legally deserved.[8]

The presence of these labour dispatch agencies challenges the collective power of the trade unions. Tho and Vu Minh Tien, Vice Directors of the Institute

7 Labour dispatch work has been legalised but has a limit of 12 months for each labour contract. See Serrano et al., (2013: 157).

8 Interview, Hoang Phuong Thao, 10 July 2013.

for Workers and Trade Unions' Workers, mention that the Vietnam Trade Union only organizes those who have at least six months' contract, which means agency hired workers are not being organized,[9] as they only sign contracts with the agency to work on a temporary basis at the enterprises where they are dispatched (Serrano et al., 2013). It is stipulated in Degree 55/2013/ND-CP, that hiring through labour dispatch is permitted only for 17 jobs (excluding most hazardous and dangerous ones in sectors like garments, footwear, construction) and in cases of accommodating the peak production period, or temporarily replacing workers who are on maternity leave, affected with work-related accidents or disease, carrying out civic obligations, or having their working hours reduced. However, the companies maintain just a minimal number of regular workers and rely on labour dispatch during peak production periods as a cost-effective way of reducing company expenses; especially wages, benefits, social security and insurance (Serrano et al., 2013: 158). This is not to mention the practice of informal recruitment of dispatch labour for jobs that are out of the legally stipulated ones. This increases a race to the bottom for the temporary workers with workers at the plants. Therefore, it is necessary to consider encompassing conditions and contents of labour subleasing into the CBA negotiations with factory owners.

However, it can be seen that agency hired labour has a strong demand to be protected by the union. These workers, due to having no ownership over factory machinery, facilities and production techniques, do not possess any advantages when negotiating working conditions, and therefore are not respected by the employers. On the other hand, it could be found that the labour dispatch force could contribute to improving working conditions clauses in the collective agreements as they are experienced in working in different factory contexts and have a wide view of what should be included in the CBA. These workers are exposed to riskier and more hazardous jobs, so they have the need and knowledge to consult trade unions on risk factors that need provisions in the agreement, which will fortify the protection of workers who are working at the factory.

Unsharpened Collective Bargaining Practices

Without positive enjoyment of rights to strike in a dispute or collective bargaining in addition to weak representation of a trade union at grassroots level, so far, few unions can conduct substantive collective bargaining and conclude effective agreements. Besides, the capacity of trade unions and workers in dialogue and negotiations is not high. Consequently, most of the agreements

9 Interview, Vu Quang Tho and Vu Minh Tien, 10 July 2013.

filed by the enterprises to competent authorities are no better than reproductions of legal norms or low-value documents. Up to the end of 2014, the rate of foreign companies having CBA signed are very modest (about 55 per cent) compared with those of domestic private enterprises (71 per cent) and state-owned enterprises (95.32 per cent). In some state-owned enterprises, no matter how well equitized they are, even the workers who could hold a small share of the enterprise, have little sense of negotiations and CBAs. They easily accept overtime work without demanding reciprocal interests.

Under the circumstances that collective bargaining is inefficiently conducted at the workplace level, there have been a number of efforts in organizing enterprise groups' collective bargaining and signing industrial wide collective agreements. Nevertheless, the effectiveness of these agreements is still not high. For example, the textile and garment industrial bargaining agreement that was concluded between the Textile and Garment Enterprise Associations and the Textile and Garment Trade Unions is essentially a negotiation between two bodies of a state-owned group that is the Vietnam Textile and Garment Group and the union textile industry. The textile and garment industry trade union currently manages about 10 per cent of textile enterprises in the country, including mainly state-owned enterprises or newly equitised ones. Therefore, this bargaining practice's lacks of adequate representation has become insignificant and therefore is hardly enforceable. In the worst scenario, this prolonged situation could pose a risk of igniting resistances and chaos at other enterprises, whose grassroots trade unions are not capable of negotiating a good deal with the management up to the level provided in the industry CBAs.

Another form of bargaining is the enterprise group collective bargaining, which happens among enterprises of the same industry or in the same locality, to hold negotiations all at once in order to put collective pressure on the employers. This could be a great way to proceed with negotiations, however, it is in need of coordination and facilitation roles of immediate upper grassroots trade unions in assisting with preparation and exchange of information among grassroots trade unions. This is a challenge for the immediate upper grassroots trade unions as they are short of personnel and competency to fulfil this task.

However, whilst it is very difficult to organize collective bargaining at enterprise and branch levels, the advent of the national wages council to adjust the minimum wage makes negotiations at national level very apparent with a feasible struggle of the workers' representatives. So far in Vietnam, the resurgence of striking waves at the time of the minimum wages announcement vindicates the fact that a policy to indicate the level of the lowest paid wage in the market turns out to be a maximum level for which the collective workers fight. That

the collective labour misunderstands the reference meaning of the minimum wage reflects the weaknesses of collective bargaining at grassroots levels to offer good causes for a successful fixing of minimum wages at national level. On the other hand, the fact is also attributable to employers' payments at the level of the statutory minimum wages. Thereby, the tripartite meeting on the minimum wage at the national wage council turns out to become a genuine bargaining on wages, in which the VGCL representing the nationwide collective labour will bargain for the highest possible (minimum) wage. The event is publicised widely through mass media, through which the published negotiating levels proposed by the VGCL are way higher than the finally concluded level.

It could be implied from the result of minimum wage negotiations that the proposals of wage levels by the VGCL before final conclusion could be an impetus level for the subordinate unions to fight for in subsequent collective bargaining at branch and workplace levels. This is quite similar to the common practices in Nordic countries - such as Norway and Sweden. In fact, the concluded minimum wage applicable in 2014 was rather low; to only guarantee 68 – 73 per cent minimum living standards as calculated by the VGCL. For 2015, if the concluded level is approved, it should also only meet 79-83 per cent of the minimum living standard of the worker. However, at present, there is no provision by the VGCL to request unions at subordinate levels to negotiate levels of wages higher than the national minimum. The situation in the national wage council shows another fact that whereas representatives from employers have engaged in negotiations of the minimum wage (also de facto wage) at the national level, the structures of the VGCL are yet powerful enough to entrench negotiating power for better wage for its members.

Under the situation of under-representation of trade union at the grassroots level, the 60 ND-CP 2013 Degree on Grass-root Democracy provides an alternative stepping stone for collective bargaining processes. Accordingly, enterprises are required to organize quarterly bi-partite social dialogue, in which the collective workers' representatives are directly elected by the workers from the factory annual labour conference. From a quite good-faith setup, social dialogue could come up in a scenario with the CBA that could be discussed, negotiated and followed up in a transparent and mutually understanding manner. Nevertheless, this method depends a lot on the enterprises' willingness to facilitate labour conferences, social dialogue and the substantive recognition of State and Trade union over the workers' elected Social Dialogue Unit in cases whose members are not UEC members. On the other hand, the Social Dialogue mechanism stipulated in the degree is

quite soft, whereby the law does not stipulate any level of sanction should an enterprise owner not comply with the degrees. Furthermore, the relationships between the Social Dialogue Unit and the Union Executive Committee (UEC) is still ambiguous to the extent that whether there is a substantive coordination between these two bodies to form a meaningful Collective Bargaining Unit, are questions to be further elaborated by the law. In current trade union guidelines 1755.2013 on implementing grassroots democracy, the non-UEC elected representatives are subordinated to UEC members in presenting at a Social Dialogue event, which really casts great doubt on whether representation in the case of UEC at the grassroots level is still in control of management. With this regard, whether the role of the UEC towards the Social Dialogue Unit is to lead, assist, authorise, or simply recognize what the Social Dialogue Unit has worked out in the collective bargaining, is key to make this process become effective.

The Vietnam Trade Union in the Process of Strong Institutional Reform

Currently, the activities of the Vietnam trade union is performed within the framework of the charter and new orientations mentioned in the trade union law and labour code 2012. All these regulations are to ensure the best representation by the trade union, in the context that harmonious and stable industrial relations are the top priority. Therefore, efforts to strengthen the institutional capacity could be view in two dimensions:

- Renewal of organizing and recruiting practices and entrenchment of trade unions structures in grassroots and branch levels, i.e. the participation of trade union units in decision making, reforms in fiscal policies of grassroots trade unions.
- Strengthening representative capacity of the trade union in a number of mechanisms, such as enterprise regular dialogue, enterprise groups bargaining and support by immediate upper grassroots trade unions in those activities.

Currently, the Vietnam trade union is driving its effort to the grassroots level. Despite retaining its targets on a number of newly established grassroots trade unions and membership recruitment, the VGCL focus is on changing ways of forming grassroots trade unions with priority given to enhance the quality of representation. This means ensuring that founded trade unions have their board

nominated and elected by the workers. One of the current approaches is the upper grassroots trade union officials shall help with interacting and forming an organizing committee, including the prominent workers in the enterprises, who will then expand the union bases through mobilizing their fellow workers to join. This committee will then meet workers inside and outside the workplace in order to establish their own union and recruit new members. This is a very difficult task because the upper grassroots union officials have to approach workers outside the enterprise or working hours, as business owners may not arrange meetings for workers, with the excuse of busy times for manufacturing. The operation of the newly formed trade union will also be restrained as the business owner will not help in the process of nomination and election of a trade union executive committee at their enterprises. Therefore, with this new way of organizing, it is necessary that the law must give provisions to protect the genuine representation of new trade unions, such as regulations to ensure employers respect the need for the establishment and operation of a trade union in their enterprise. In addition, Human Resource officer should be restricted from becoming union committee boards, which in general they become the president of the union. Limiting the managers in the executive board of trade union is necessary step to establish an independent union.

In a grassroots trade union organization, there are trade union units which execute trade union activities at production lines. However, the roles and activities of these units are not clear, lacking links with the trade union executive board and leaders. In many cases, trade union units are not consulted, nor do they participate in the activities of the trade unions executive board. This is a disadvantage as the trade union units have close ties with daily production practices, the minds and living conditions of workers. Lacking involvement with trade union units leads to the fact that decisions by the Executive Committee of the trade union do not properly reflect the needs of the labour collective. The decisions and commitments with the employers could hardly be implemented without the commitment and execution of the trade union units.

In the structure of grassroots trade unions, besides the board and trade union units, there are functional departments such as female workers' divisions, welfare divisions and the trade union overseeing committee. There is a need to innovate and build many expertise divisions to support the executive committee in meeting the practical needs of the negotiations and social dialogue, as well as the regulations of the state. This work must go in hand with improving the performance of the activities to match with specifications in the trade union fiscal policies. For example, a delegate representative division is needed for

matters in regular dialogue with the management. On the other hand, the trade union overseeing the committee's activities must be strengthened to ensure transparency and accountability in trade union operations.

Currently the management of trade union revenues and expenditures is a very important aspect in ensuring the sustainability and effectiveness of grassroots trade union activities. A challenging matter for the trade union system is that it always has to prescribe norms and criteria for effective expenditures on grassroots trade union activity, which is relatively difficult as each enterprise has its own particularity. In some enterprises, the trade unions have their account shared with that of the management, under the control of an enterprise accountant. Therefore, stronger provisions to entitle upper grassroots trade unions the role of collecting the trade union funds from business owners and grassroots trade unions are needed. Instead of providing directive norms, the upper grassroots trade union could request that grassroots trade unions prepare annual expenditure plans for endorsement or submit detailed proposals in competition for extra funds. The utilization of trade union funds must be decentralised to trade unions with strong collective power and representation. On the other hand, if the union opens up a way for cooperation at the workplace with the employer, a joint funding scheme should be established to bind both parties in jointly organizing activities that are mutually beneficial. These procedures must be ensured by the bottom-up participation of workers in the use and management of trade union budgets, in parallel with reasonable regulations on the use of trade union budgets in coordinating representing activities between upper grassroots trade unions and grassroots unions.

Regarding the management and protection of agency-hired labour, the unions need to grasp a higher position as a negotiating partner in the enterprise in order to decide matters in enterprise production and recruitment plans. In the field of subleasing, union representation must get a wider reach to include the agency-hired staff in its scope of protection and promotion of labour rights, so as to cope with possible abuses of employers by means of labour dispatch. In this regard, the unions could engage strongly in the business of labour recruitment[10], which requires the supporting roles of superior trade unions, especially the provincial/city labour unions in negotiating with associations of businesses regarding terms on recruitments of labour.

10 Decision No. 434 / QD-TLD on 27 February, 2006, the Presidium of Vietnam General Confederation of Labour.

Box 1. A Case Study: The Bottom-Up Organizing

Organizing from the bottom-up is a new approach of establishing grassroots trade unions in Vietnam. This is the result of the advent of the 2012 Labour Code, which entitles the immediate upper grassroots level union officials to represent the workforce at workplaces where there is no grassroots trade union established. One of the first things these organizers must do is to convince and organize the workers at the workplace into a grassroots trade union. However, this new approach has been challenged by a myriad of anti-union practices by the management. In Binh Duong province, trade union officials reveal a typical example of how anti trade union tricks are severely hampering the organizing efforts.

This is a story about an American Consumer Health company, which for its 10 years' presence in the country, would not allow a trade union to be established at its workplace. In any hardly fought attempt where a higher level trade union could get entry to talk with the company's focal person for the establishment of a trade union, the next time they came back, the discussion was stopped due to that person, even Human Resource staff or a hired director, having been replaced by another. When trade union officials tried to approach workers in order to form a core organizing group, workers found little interest in joining trade unions. On the one hand, they may have feared being bullied by the management should they join a union. On the other, the benefits from joining a trade union were not comparable to what the company delivered through the functioning of welfare groups as an alternative for a union in taking care of workers and their families. On the occasions that the district trade union held joint activities with the all companies trade unions in the area, this company also sent workers from the welfare group to join, but withheld themselves from any moves concerning organizing activities.

Although the company provided high benefits pay for their workers, the chemical odour, that was smelt easily outside of the factory, shows that workers in the factory may be at great risk of occupational health and safety issues, for which they would only have their voices heard and protected if there was a trade union in the company. The Binh Duong union committee say that there was no inspectorate and legal sanction on this company due to lack of legal measures to deal with anti-trade union tricks.

This case study shows that although organizing from the bottom-up is a good will policy of the state and VGCL, this method could not scale up quickly without further elaborated laws on protecting trade union rights, especially the Freedom of Association that are mentioned in the ILO Convention No 87 and 98, which Vietnam is yet to ratify.

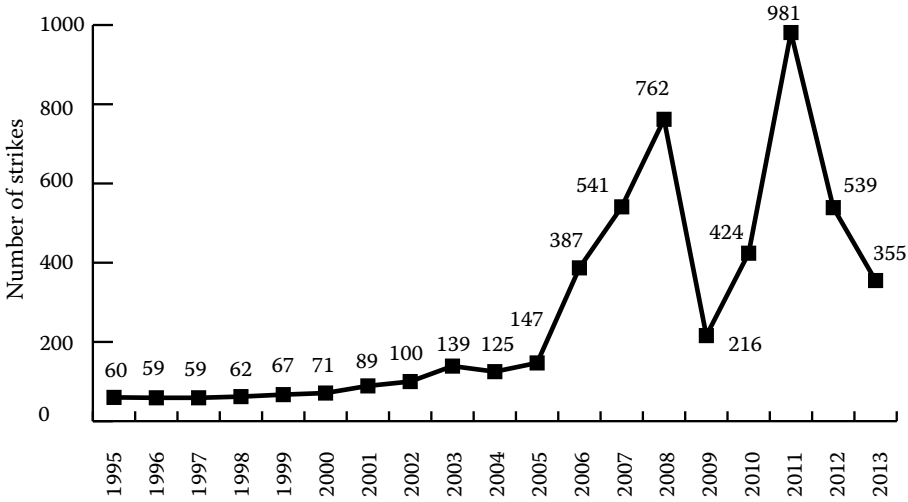
Labour Strikes and Other Forms of Resistance

Background of Strikes in Vietnam

Trend of Strikes

When Vietnam integrates deeper into a market economy, strikes are an inevitable phenomenon. Strikes occur mainly in the private sector; almost 80 per cent in the foreign direct Investment (FDI) companies alone (Schweisshelm, 2014). During the 1990s and at the beginning of the 2000s, the predominant reasons for work stoppages were infringements and harsh violations of applicable labour laws perpetrated by employers. Whilst the causes of these rights-based strikes are still relevant, interests-based causes are also gaining importance (Schweisshelm, 2014). The strike wave boom over the periods from 2007 - 2008 (762 strikes) and 2010- 2011 reached its peak in 2011, with the occurrence of 981 strikes nationwide (MOLISA strike report). The main reason for strikes is an enterprise's evasion of unemployment insurance payment, and being late in raising and paying salaries, bonuses, overtime payments and excessive overtime. Besides, in the FDIs enterprises, wrong conduct in insulting and physically abusing workers by foreign managers is also a key catalyst for the occurrence of the strike.

Figure 1. Number of Strikes in Vietnam



In 2013, there were a total of 355 strikes in the whole country, divided by type of business such as foreign direct investment companies (FDI): 242 cases (accounting for 68.17 per cent), which centre on investors from Korea - 98 cases, Taiwan – 75 cases, and China - 20 cases, Japan 18 cases. The rest are firms from other countries. 113 strikes occurred in private enterprises - (accounting for 31.83 per cent). By sector: in textile industry enterprises, 143 cases occurred (accounting for 40.28 per cent), in the footwear and shoe industry - 58 cases (accounting for 16.34 per cent), in wood processing enterprises 52 cases (accounting for 14.65 per cent), in the energy and electronic industry - 23 cases (accounting for 6.48 per cent), in the mechanics' industry 19 cases (accounting for 5.35 per cent), the rest are enterprises in other sectors. Per strike there were approximately 462 participants (as compared to 586 people in 2012) and the average time of a strike extended from 2-3 days. All the strikes that occurred were not in compliance with the orders and procedures prescribed by law.

General Characteristics of Forms of Strike: Spontaneous and not well organized

All of the strikes were not premised on a collective bargaining (agreement) or as a result of any procedural resistance. The strike that took place in 2011 did not have the leadership of the union. Most leaders of the strike were not engaged in any dialogue with the employers and many of them were anonymous. In all cases, the strike was an alternative to collective bargaining. In this way of negotiation, it is common for workers to stand at the gate, handing out requests without using speakers to ask for change of benefits and working conditions.

Workers tend to prioritise on pragmatic and basic needs, but only little efforts have been made to negotiate them on the CBAs. Most chronic strikes occur on a regular basis, on the occasions of minimum wage announcements, rises in cost of living or as a sequential reaction to preferential policies of other enterprises to their workers such as wages upscaling. On the other hand, many employers appear to be well-prepared as they are just waiting for the workers to strike in order to change their policy. The majority of strikes are often in small groups without the consensus of all workers. Some other strikes are even started by production managers and employed managers, who also want their benefits changed thanks to the strike action. The fact that when enterprises use numerous agency-hired labourers, they are susceptible to strikes.

Because the majority of the labour force switches their workplace from rural areas to an industrial context, their low level of education, legal awareness, lifestyle and habits do not keep up with the demands of life in the enterprise working environment. The problems resulting in disputes are likely to be

precarious and individualised, mostly due to unsatisfied needs for resting, chatting during working hours, quality of meals, toilets, etc. Meanwhile, the employers often complain about the poor discipline of workers, unawareness of keeping sanitation, wasting materials and low productivity. These are mostly the interest-based issues not yet covered by social dialogue and collective bargaining.

In fact, workers face a myriad of difficulties in their life at the workplace and industrial zones where they reside. Various needs emerge in the workplace, such as everyday meals and lodging prices, or schooling issues for children. These needs can be raised and addressed through social dialogue with trade union representatives and management and collective bargaining. But chances for expression are missed due to workers' indifference to the collective power, which could potentially push up their demands on employers. Meanwhile, their resistance to change is dependent on outside events like the minimum wage or wages adjustments from neighbour firms, and escalating consumer prices that lead them to no other resort than joining a strike. These characteristics hint that labour disputes and resistance are susceptible to spontaneous booms at the expense of mutual commitments on addressing issues through negotiations.

Since 2012, during the slowdown of the economy, the number of strikes decreased significantly in Vietnam. Currently, the consumer price index increases are kept stable, which keep workers from chronic pressure as in a period of economic boom. Previously, a strike took place only when workers were facing pressures of improving working conditions, as well as chances of gaining interests in the absence of their representative. At present, workers are discouraged to strike, nor do they stick to their jobs, which cause high labour turnover rates. However, other forms of spontaneous resistance may exist such as hiding in the toilet, or lazy working, which could easily upset the employers. On the other hand, the global economic crisis brings in new wave of investors to Vietnam in high labour intensive sectors in the context of scarcity for high-skilled workers. Many serious enterprises want to keep their workers, especially skilled and senior ones, so they must also pay attention to ensuring suitable living conditions for workers.

In most forms of resistance by workers, the roles of trade union officials are fuzzy. Workers in the enterprises that are having strikes complain that trade unions do not act to stand by them. In enterprises where trade unions perform their functions well, trade union officials are often considered as mediators and negotiators between both parties. They are flexible in using their soft power to convince management to improve working conditions of workers based on the principles of state law.

Institutional Features of Workers' Resistance

A fundamental limitation to strikes and labour resistance in Vietnam is implementation of conventional industrial relations processes such as dialogue, and collective bargaining by partners, which are very limited. On one hand, without the positive ownership of the right to strike, it is very hard to push up negotiating claims and enforce commitments from the management. On the other hand, collective bargaining is limited due to lack of representation and competency to engage dialogue by the parties, especially the labour collective. Due to these limitations, most strikes do not occur on the basis of a collective agreement or dialogue, so the strike usually takes place in the late stages of dispute occurrences, when the contradictions have been accumulated over a very long period in the enterprise.

The organization of a legitimate strike in accordance with legal procedures is difficult due to the fact that for the strike to occur, it needs to go through a prolonged dispute resolution procedure, including different steps of mediation, arbitration, etc. Besides, the specifications for organizing a lawful strike are very complicated and almost impracticable, such as getting 50 per cent of agreement from the labour collective. Therefore, the resistance by workers is generally regarded as illegitimate/ illegal, which places workers in a weak position as their demands are considered to be violating the law and spontaneous. This creates a chance for management to delay improvements to working conditions and to produce more drastic measures of discipline. On the other hand, the trade union is to blame if they are staging a strike not according to the law, which exacerbates the motives of the trade union and undermines their negotiating power.

However, strike occurrences always result in the intervention of state actors, whose administrative measures are often in favour of the workers. Therefore, the effectiveness of a wildcat strike by workers is very high as it is the flashpoint for the presence of labour authorities, police and inspectors. The rationale for this fact is that the current labour inspection force of Vietnam is relatively thin and operates under the administrative mechanism, thereby they cannot regularly check the law compliance of business owners. A strike is always considered as a great risk to social security, hence it is immediately responded to by the urgent actions of these state bodies, including inspectors. On the other hand, companies investing in Vietnam often seek different ways to avoid duties such as tax, social insurance and trade union funds, so they are afraid of being inspected by state agencies. Therefore, where the strike takes place, the employers are always subject to concessions to the workers' demand under pressure from the state authorities.

The resolution of strikes based on administrative intervention of the states accidentally creates a prerequisite for the onset of strikes in Vietnam.

The workers well realise their advantage in waging wildcat strikes to benefit them from the presence of state authorities and media in favourable occasions such as an enterprise's high season for orders, minimum wage escalation, etc. However, it could be indicated that the strike also presents a chance for systematic interventions of trade unions and competent state authorities via measures of mediation and reconciliation. Therefore, in order to limit a strike, it is recommended that competent agencies must change the approach of intervention from an administrative resort to an industrial relations instrument of mediation in support of the representation of the parties in the process of social dialogue and negotiation.

Labour Disputes and their Resolution

To explain the cause of workers' resistance, many misunderstand the causes of disputes and the causes for demands of the workers. An example of a dispute in a textile factory in Ho Chi Minh city regarding an employer's regulations to prevent workers from overuse of toilet facilities, which ignited the resentment of more than 900 workers. At first sight, it is easy to connect the unreasonable prohibitions of employers to the workers' strikes. However, a closer look into the story hints that the limitation of toilet use was because of the employer's dissatisfaction over workers taking advantage of the toilet as a place for chatting. The main reason turns out that the employers did not arrange working and relaxation time properly, which caused workers a persistent need for relaxation. When an unsolved misunderstanding goes to a climax, only a small excuse could result in the break out of a strike, which will affect longer term industrial relations. Many strikes or wildcat resistances would not have occurred if there had been a timely mechanism for parties' needs to be expressed and resolved.

When a dispute occurs, whether resulting in strikes or complaints from either parties rendered to competent authorities, the involvement of state bodies is very important in determining whether the dispute is resolved in a harmonious way or is exacerbated. Normally, a dispute coming into the hands of local labour authorities are often categorised in terms of right-based or interest-based ones, which serves as the basis for delegation of competent agencies to solve the disputes. However, this way of determination depends a lot on the subjective views of a person who handles the cases and results in exertion of administrative sanctions in favour of workers' standpoints, without considering the preliminary needs of parties in disputes as well as their proposals on solving the issues. On the other hand, the mediation capacities of public officials are largely limited. Sometimes mediators assigned to solve disputes are obstructed from accessing the cases by enterprise guards. As a result, the agency's intervention comes

late, when a strike has extended for a long time, and industrial relations of both parties suffer unrecoverable damages.

To solve labour disputes in a harmonious way, the state agency should change the approach from administrative measures to mediating ones. For the strike to follow the statuary procedures, the intervention by state agencies must detail the supporting role of the 3rd parties, who are a state mediator and an upper grassroots trade union to assist the parties in settlement of disputes, conducting of social dialogue and collective bargaining.

According to the procedures of dispute resolution, a mediator's intervention must happen promptly. However, the mediator faces a lot of difficulties in accessing the enterprises. Denunciations and complaints rendered to conciliators are few. On the other hand, the mediator is not obligated to any duty in maintaining harmonious industrial relations of enterprises as well as ensuring the occurrence of social dialogue and collective bargaining activities. Meanwhile, the minutes of the mediation is not requested as a precondition for collective bargaining of both parties, or filing to the superior inspection agency for tracking. A mediator can easily accept the failed handling of the dispute. Therefore, there is a need to establish a professional mediation agency to empower mediators in assisting industrial relations at enterprises. Besides, the law should consider the renaissance of the Enterprise Conciliation Council as a bipartite mechanism in the enterprise to facilitate quarterly social dialogue under close supervision and support of the state mediators in improving industrial relations at the workplace.

The Vietnam Trade Union in the Context of International Economic Integration

The Role of Trade Unions in International Economic Integration

Vietnam is turning itself into a processing factory of the world with its advantage of a cheap and intensive labour market, and by receiving FDI inflows into the country through free trade agreements such as the TPP, EU FTA, etc. This promises a bounty of employment opportunities and improvement of working conditions, as binding reciprocities of the agreements. The conclusion of the FTA hints at a booming of the textile industry as well as a strong wave of interest conflicts and strikes in Vietnam. This is an opportunity for trade unions to strengthen their representation functions in order to gauge a collective power in improving the lives of workers, while on the other hand, building a formal labour force of high skill and a good sense of discipline to contribute to sustainable production and

employment. Efficient union activity resulting in increased welfare for workers will pose great pressure for enterprises to improve management and practices towards sustainable production and business goals.

The challenge for the Vietnam trade union in a market economy is accelerating institutional reform to meet the stronger requirements and commitments from the state in free trade agreements such as Freedom of Association, Collective Bargaining. The Trade Union has to accustom themselves to the new function of essential representation as well as being organizationally responsive towards social dialogue mechanisms. Besides, there will be non-stop pressure from stronger economic structural transitions, urbanization and migration of labour from rural to urban areas, which requires multiple concerns and improvement in the capacities of trade unions, as well as industrial relation institutions that are taking shape in Vietnam.

Conclusion

The trade union in Vietnam is operating in the direction of development of industrial relations within the framework of a socialism oriented market economy. It could be seen that Vietnam has chosen a safe path for the development of industrial relations, which is not based on 'invisible hand' legal management, but through the dynamic engagement of existing institutions under the direct intervention of the state in securing harmonious industrial labour relations. The Vietnam trade unions need strong innovations in representation and collaboration with competent agencies in exercising its representing role. In particular, it is necessary to boost the role of upper grassroots trade unions in support of the grassroots ones under the guidance of law.

In particular, the establishment of a union with limited intervention from management becomes very vital. At the grassroots level, democracy in the unions must be promoted, in the context of a single, non-competitive unionism, particularly in matters of trade union revenues and expenditures. Besides, the immediate upper grassroots union must increase its supporting role for grassroots trade unions in areas of capacity building, social dialogue, negotiation and cooperation in the workplace. At the sectoral level, enhancing the role of the trade national branch trade union in extending the coverage of industrial collective bargaining is important in order to avoid too much of a bargaining burden on the grassroots level. On a national level, the trade union has to participate in the formulation and adoption of collective bargaining law, which considers regulations of coordination mechanisms with state agencies in organizing dialogue, collective bargaining and resolution of collective disputes.

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CHAPTER EIGHT

Strategies of Labour Organizing in Indonesia: Lessons from Two Industrial Cities

by BAMBANG DAHANA & SYARIF ARIFIN

Introduction

His body was thin and his eyelids were black, indicating lack of rest. His mind was occupied by the problems at his workplace. Olim Surya Atmaja (26 years old), a father of one child, worked in PT Mekar Jaya Gemarubberindo, which is located in Tangerang industrial city, about 40 kilometers from Jakarta. The factory produces motorcycle parts for the local market. From 171 workers employed there, 70 had permanent employment; while 60 were working on temporary contracts, and 21 others were day labourers. In October 2012, after a 16-day strike in front of the factory, Olim was fired from his job, along with 38 workers. They waged a strike to show solidarity for eight comrades who were laid off without being paid wages for many months. Sitting cross-legged at the secretariat of a union in Tangerang, Olim explained, 'After that lay off, the management was recruiting new workers.' Before they mounted the strike, the union brought the case to an inspector of the local government's labour office, only to learn that the official recommendation, which asked the company to reemploy those eight workers and fulfill their rights, was a mere paper-tiger. Even worse, Olim and many others eventually lost their jobs, too.

This chapter disscusses the dynamics of the struggles of labour unions during a period of increased mobilization of labour protests since the year 2009, and

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explains the social changes that these struggles could effect in their respective local context. Olim's case reflects two significant developments that provide the background of the struggles that are discussed in this chapter: Firstly, Olim's is an often-heard account of Indonesia's post-Suharto flexible labour market regime. The attempt to make the labour market more flexible had actually already been initiated in 1995. The economic and political crises which put an end to Suharto's grip on power in 1998, however interrupted this attempt, to eventually regain momentum in 2003. After the fall of Suharto, Indonesia went through a number of political, legal and economic reforms. The Government of Indonesia ratified a number of ILO conventions and introduced three labour-related laws, namely: the Trade Union Act (2000), the Employment Act (2003), and the Labour Court Act (2004). The new labour law basically perpetuates the low-wage policy of the New Order[1], but adds a new feature: it enables companies to hire and fire more easily. Secondly, since the enactment of the new Labour Act (2003), outsourcing and prolonged contractual work schemes have evidently caused widespread discontent. The protest waged by Olim and his union, occurred in the broader context of the reemergence of a larger labour protest in many industrial areas in Indonesia.

It took a number of years for trade unions – from all traditions and political spectrums – to respond to the pressure, and finally gather strength to challenge the labour market flexibility policy. During the post-Suharto political reform, and in the course of the introduction of the multi-party system, there were talks and negotiations among the union leaders and politicians to channel labour demands through political parties. Some labour activists joined the major parties and ran in the regional elections. Some unions also attempted, with limited success however, to build labour parties. But the influence of the labour movement in the party politics stayed very weak. It was rather through street politics that the labour movement was able to make itself visible in the political arena and negotiate its demands with state actors.

In the year of 2010, trade unions started to gain confidence by taking their demands to the streets. Since 2011, unions have drawn media attention by a series of street protests and demonstrations to demand better working conditions. Mass mobilizations reached a peak in the years 2012 and 2013, when the labour movement waged two general strikes (see Mufakhir in this volume).[2]

1 'New Order' designates the period of the Suharto-dictatorship. Suharto himself coined this term, in order to distinguish his rule from his predecessor's, Sukarno, who was Indonesia's first President after independence.

2 A row of reactions of the central government to the mass protests has weakened the movement

Although these developments weakened the labour movement, street politics have remained its main framework of action (Juliawan 2011). The heyday of mass mobilizations illustrates some interesting characteristics of the Indonesian post-Suharto labour movement: since the beginning of this period, only the labour movement and no other civil society movement has had the capacity to mobilize a large number of the masses to occupy a public space (presidential palace, parliament building, toll roads, etc.). At the national level, mass actions require the willingness of the largely-fragmented union landscape to share the stage and cooperate, as well as to build coalitions and solidarity across sectors and political traditions. Needless to say, union leaders need to sit together and formulate a common agenda. By unifying their demand 'Against Low Wages and Outsourcing' in 2012 the labour movement was able to wage the first general strike since the bloody smash of the labour movement that accompanied Suharto's seizure of power in the years of 1965 and 1966. Though this pressure failed to bring substantial policy changes, it was able to push for some improvements on the local level: In some industrial cities in the Greater Jakarta region, wages increased significantly and the widespread practice of prolonged contractual employment as well as illegal outsourcing, were put to an end.

Certainly, the above-mentioned nation-wide mass mobilizations required solid union activism at the grassroots level. The mobilizations needed more and more people. They required the ability from trade unions to maintain their members. Union organizers had to work even harder than before to wake-up and gather support from more passive members. In this period of mass mobilization, many organizers were kept busy by moving between meetings in factories and their federations to discuss working conditions and encourage members to protest against injustice. In particular, this period of mass discontent has challenged unions that have been – and continue to be – state-controlled and stubbornly promote harmonious industrial relations, while they are facing pressure from their own members.

In trying to understand the dynamics during the period of mass mobilization, both at the national and the grassroots level, it is important to take into account the interrelation of the state, capital and labour in neoliberal capitalism. In the Indonesian case, almost one decade of labour flexibilization has caused mass discontent. Employers perceive the resistance from workers as an obstacle for further flexibilization and production efficiency. Trade unions enable workers to negotiate fair working hours and production targets. Thus one's decision to join a labour union and build solidarity along with his or her fellow workers in

since 2014. An analysis of these developments is however beyond the scope of this chapter.

the organization can be viewed as a refusal to admit the control of production modes.[3] As we can learn from Olim's case above, once workers resist dangerous work and cheap labour policies, employers apply a number of tactics to weaken labour unions and – if necessary – destroy them.

This chapter is also an attempt to understand what was happening on the ground during the period of mass mobilization beginning from 2009, to understand how trade unions attempted to push for the protection of basic labour rights, to raise class consciousness among workers, and to face the new challenges of flexibilization, focusing on two labour unions: the National Workers Union (SPN) in Pekalongan, Central Java, and the Karya Utama Labour Union Federation (FSBKU) in Tangerang, Banten. While the two unions are located in two cities that are separated by large distance, and while their resistances feature different patterns of actions and coalition-building, the demands raised by these two unions eventually reverberated in social changes in the respective local contexts. The subsequent sections of this chapter reviews the development and transformations of the two labour organizations. The concluding part will discuss issues of working class consciousness and transformations of urban space as an effect of the social changes that were induced by labour struggles in Pekalongan and Tangerang.

Pekalongan: 'Keep Up the Grassroots Work, Change the Local Politics!'

Pekalongan is a rather small city, but has long been known as a trading port (pop: 320,000, 2011) on the Northern coast of Java. Since the mid-1980s, the textile industry changed the landscape and land use in the suburban areas. As small to mid-sized factories were built in the village areas and interspersed with residential areas and ricefields, the industry grew to become the most important employer in the city. The textile industries on the outskirts of Pekalongan usually employ local workers. They obviously take advantage from flexible and irregular employment arrangements. Only a small portion of workers are employed as permanent workers. Until now, most workers have a temporary contract or are employed as day labourers. It is a common sight that every morning people

3 Braverman (1998) mentions three main modes of controlling labour in the sectors of manufacturing, office jobs, and trade. First: 'scientific management', i.e. workers are forced to agree to the rules of working hours, employment targets, monitoring and sanction, and they gain rewards for their agreement to such regulations; second: 'specialization of production', i.e. by means of specializing tasks, detail workers are 'deskilled'and thus considered ineligible for higher wages; third: 'technology', i.e. the skills and abilities of workers are considered to be in need of constants adjustment to the highest level of technology available.

gather in some corners in town near the town square. They are all job seekers watching out for recruitment agents, who will send them to a factory as day labourers. Against the background of such uneven power relations, it seems that there is no point in joining a union. Therefore, it is of little surprise that in 2012, out of 23,000 workers in around 300 companies in Pekalongan city, only 10-15 per cent were unionised.

It is also important to note that companies and local power holders often exploit socio-cultural factors. Textile companies operating in the countryside are usually perceived not only as economic actors who provide jobs for the local youth population – company owners and managers usually play the role of 'noble lords', who generously contribute money for village development projects and make donations to Islamic religious schools. In predominantly Muslim areas like Pekalongan, almost every residential area has a large mosque led by influential religious leaders[4]. There are rumours – or it could be said that it is an open secret – that companies also donate money to support village administrations. The waiting room of a police station that we once visited revealed the close relationship between companies and village administrations: a brightly-painted long chair had a sign with an engraving that said: 'Donation from [a locally well-known factory].' As companies cement their relationship with local authorities, workers who are treated unfairly face powerful giants who enjoy the backing the triumvirates of village officials, police officers, and religious leaders. To disobey a factory manager or a supervisor is widely considered inappropriate and disrespectful, even close to sinful, behaviour.

Against this backdrop, it is remarkable that since 2010, unionists of the SPN Pekalongan have dared to position themselves equal to employers and government officials and eventually endured a number of very tough negotiation processes. They could even make some, even decent, achievements and enforce their members' basic rights. Their struggles were not confined to spaces within factory gates: they built alliances with other unions and sectors of society, as citizens, to challenge the company and authority to fulfil their rights.

It is worth mentioning that some members of the SPN Pekalongan had been dissatisfied with their unions, so they seized the opportunity to reform their union. At the national level, the National Workers Union (SPN) is a splinter of the All Indonesia Trade Union (SPSI), which at the time of Suharto was the only officially recognized labour union. Although the SPN split off from the SPSI, it

4 The Muslim mass organization Nadhatul Ulama is the biggest and the most influential religious movement in Pekalongan. From their adolescent years, most people usually identify themselves as members of a social organization affiliated to Nadhatul Ulama. Pekalongan and some other towns on Java's northern coast are furthermore strongholds of a number of Islamic Parties.

inherited some of the organizational culture of its original union. The federation's membership used to be largely made up of workers in the textile, garment, footwear and leather industries, but knowing this was a sunset sector following the Multi Fibre Agreement arrangement in 2005, it began to organize the workers in other sectors, too. At the end of 2009, in the midst of the worsening labour situation, there was growing discontent among young SPN Pekalongan members with the older generation of unionists. They experienced their union as a toothless tiger. The younger union members managed to win out the differences, and the union underwent changes that turned out to be significant. As fresh blood replaced the old union leadership, the cornerstone of a more responsive union was laid. The new leadership rebuilt the union in 2010 with an organization structure that was, compared to other local SPN chapters or branches, unconventional.[5] To push for further changes, the fresh union leaders equipped the structure with an aptly named department: advocacy, public policy, education, and women's empowerment. The naming of the new department reflected the ideal of the union that they had in mind.

In the wake of this process of restructuring, the union emerged as a new force on the Pekalongan scene. In their advocacy work or case handling, they still used the bipartite and tripartite negotiation scheme, but they combined it with mass protests and strikes, which at the time were relatively new means of negotiation in Pekalongan. In fact, challenging the companies and being critical of government was something that had almost never been seen before in Pekalongan. The new SPN Pekalongan leadership followed a smart strategy and established good connections with some local newspapers (which mushroomed when, in the wake of the fall of Suharto, freedom of the press was introduced in Indonesia). SPN fed them with stories, cases and analyses and managed to attract wider attention to labour issues.

Between 2011 and 2013, the most frequent cases handled by the union were related to the issues of contractual labour (and its related issues: low wages and wage discrimination)[6] and freedom of association. Related to the former issue is the fact that many companies act against the law and continue to employ workers

5 SPN Pekalongan City and SPN Pekalongan Regency are two separate organizations with their own organization structures, but they have a close-knit coordination structure, and both organizations pursue many joint activities. For the purpose of simplification, the term SPN Pekalongan is used to refer to both of them.

6 The Pekalongan City minimum wage in 2012 was Rp 895,500 (at the time around $98 USD) per month. Not all companies are however paid wages according to this provision. It is common knowledge that wage labour should allow workers to make ends meet. But because wages are not sufficient, many workers – after working eight hours a day – have to take a second job as small-traders.

with temporary contracts, even beyond the legally allowed period of three years. Workers may not be employed under a temporary contract by the same company if they have worked for that company for three years. These companies however exploited the workers' ignorance, or low awareness of their basic labour rights. Most workers do not pay attention to their contract-work agreements. It is very possible that they do not dare to ask for a copy of the agreement to keep. Therefore, they remain in the status of a temporary worker, although they have worked for the same company for years.

Furthermore, the union challenged the practice of union-busting. This was experienced, for instance, by two workers at the Aro Iklas Surgical Hospital in 2012. The two unionists experienced intimidations and physical assaults, after they had criticized the company for sensitive issues (wages, the social security program, and long work hours). Sometimes companies are clever and avoid the use of threats or physical violence, and opt for subtler ways to weaken workers' demands for their rights. In the case of the Aro Iklas Surgical Hospital workers, during the negotiation process, the management persuaded all the workers to sign an individual agreement instead of a collective agreement. The management also attempted to portray the unionists as evil that wanted to disrupt the production and attempt to cause loss.

Through their legal efforts, SPN Pekalongan won a number of cases and could achieve some improvements in the workplaces (like wages, work hours, allowances, and freedom of association). Of course they did not win all cases, nor were they able to meet all their expectations. In some instances, the union lost cases, and as a consequence some of their members lost their jobs. But the union did manage to obtain a fair severance pay for the workers. As we were told by some union members however, the whole process of advocacy was a valuable experience. Each case was like a surfing board that helped union members to learn about labour rights and analyse labour conditions in the workplace. The experience of challenging authorities also changed their view of power. They learned that companies could be sued, that as citizens they have the right to make their government accountable, and that they didn't have to be afraid when dealing with police officers.

Through mass rallies and other forms of collective action, SPN Pekalongan promoted solidarity among workers from different workplaces. The union launched a series of discussions on wages to develop their arguments.[7] And in

7 They criticized the calculation of wages in the wage councils towards the end of the year: Based solely on market surveys, these calculations did not take into account the projected rate of inflation of the following year. From a mini survey conducted among working-class families, SPN Pekalongan unionists conclude that the current wage level is not sufficient for workers'

2011, it organized a major mass action in order to make their demands fulfilled. The workers blockaded the North-Coast main route and caused long congestions. This action forced the local government to put aside the Governor's decree which set annual minimum wages for every city/regency in the province.

The SPN Pekalongan unionists seemed aware that, to bring about a bigger impact, they needed to build broader coalitions with other unions in neighbouring cities. They actively made contacts with other unions, as a preliminary attempt to build the 'Workers Union Alliance of the West Northern Coast', which was initiated in 2011. In the course of later developments, SPN Pekalongan started to expand its attention from labour rights to citizen rights. The union started to raise some issues related to public services, like the rights of the people for municipal administrative service, health services, and education. They cooperated with several NGOs, which supplied them with analyses and know-how of annual municipal budgeting and policy making. To mobilize public opinion, they also built alliances with local mass organizations, knowing that some of their best cadres are also members of youth, social or religious mass organizations.

While the union started to connect labour issues to citizen rights, they also encouraged their members to actively engage in neighborhood activities. In one fishing village, among the poorest regions of Pekalongan, a plant-level SPN unit organized monthly gatherings that were open to all interested neighbours, even though they were not union members. As explained by the organizer of this event, these meetings gave an opportunity for all attendees to express their opinion and to discuss problems of the community.[8] In other places too, such meetings enabled the communities to raise issues spanning from industrial waste caused by a textiles factory, to evictions that cleared land for the development of a railway track, to land conflicts, as well as red-tape and extortion by public servants. By expanding their scope of activities from labour to wider community issues, SPN Pekalongan became a new hope for people who were seeking justice in general.

Box 1: Some Cases Handled by SPN Pekalongan (2010-2011)

May 23, 2012. Using management improvement as a pretext, the management of PT AI fired some workers and shifted several workers to other positions.

families to pay the costs for education and healthcare of their children.

8 The organizers of the community meeting mostly were female workers who work at the fishery factory. Some of their husbands joined the meetings, while others wondered and even had objections to the meetings after they had learned that their wives suddenly talked about rights, joined protests and had activities outside the house.

Two of them were Nur Haeni and Dwi Pudji Astuti, at the time respectively the chairwoman and secretary of the labour union at the surgical hospital. The management ignored the notice of the local labour office to rehire these workers. The union raised this issue and challenged other violations: wages that were below terms, time off, and social security. On July 17, 2012, the union organized a rally that was supported by a local youth/student organization. The march went from town square to the hospital and caused a five-hour traffic jam. The protesters also set a tent in front of the Aro Hospital. Meanwhile, Nur Haeni reported the case to the police station. The protest lasted until July 19, 2012, at 2:30 am, after local MPs promised to act as the mediator. On August 2, 2012, the management of Aro Hospital agreed to sign a waiver to pay proper wages, include all workers in the social security scheme, and provide appropriate leave entitlements.

April 2010. SPN Pekalongan involved in an industrial dispute with Korean company PT BSI, a supplier of fresh fish for canned-fish industries in Korea and Taiwan. The company recruited 500 housewives in the surroundings of the factory for the employment. PT BSI workers approached the union with a number of issues: a mother who was considered careless had received a sanction from the management, three workers had been arbitrarily fired and dozens of others had been suspended only through a verbal notice. The case opened the door to uncover other violations (wages, prolonged contracts, social security benefit, holiday allowances, as well as the long and erratic working hours). The protesters went through bipartite and tripartite negotiations, launched street protests, and blockaded the company. The case instigated further community meetings and discussions, and accelerated the formation of a plant-level union.

April 2011. 74 workers at the glove factory in PT PAT were fired. SPN union members rejected the dismissal and questioned the company for not including them in the social security scheme. They threatened to wage a strike and report the matter to the labour office and the local parliament. In the midst of a mediation process in early May 2011, the secretary of the plant-level SPN reported to the police that he had been persecuted by the company's security officers and he and other union members had been threatened by unknown people. On May 10, 2011, through negotiations that were mediated by the local Parliament, both sides reached a settlement: 12 people were reinstated, and negotiations were to be taken up for the remaining 62 workers. It was agreed that if, after these negotiations, the workers were laid off, their rights to receive compensation in accordance to the standards would be fulfilled.

Source: SPN Pekalongan documentation.

Tangerang: 'Don't Let Them Steal your Future!'

Located 40 kilometers west of Jakarta, Tangerang is one of the most important heartlands of the manufacturing industry in Indonesia.[9] In the late 1970s, when the capital city Jakarta began to face overwhelming use of land due to urbanization, Tangereang as an industrial zone was also impacted.[10] Over 30 years later, Tangerang had undergone rapid and massive changes. Following the central government's spatial plan from the early 1980s, Tangerang and several other cities surrounding the capital that were connected by toll-roads were assigned as export zones for manufacturing activities, including tyre, footwear, and apparel. Some administrative rearrangements were also made, which divided Tangerang into three administrative units. Factories had already been built since the early 1970s. Agricultural lands (rubber plantations) shifted from old landlords into the hands of companies. The former land owners gained profit from setting up rental houses, rented rooms, as migrant factory workers began to settle in Tangerang (Saptari 2008; Surtiari 2008).[11]

In this process of spatial transformation – whether it complied or violated the initial planning scheme – the manufacturing industries which had formerly occupied Tangerang City along the Cisadane river bank (areas of Batuceper, Jatiuwung, and Cipondoh) sprawled into the outskirt areas (Balaraja, Tigaraksa, Cikupa, Pasar Kemis, Legok, Kosambi, and Serpong). Currently, a number of companies have acquired the rights to build industrial zones. Five major industrial areas of Tangerang are run by private companies, and all of them advertise easy access to the toll roads (see Table 1).

With a fairly long history of industrialization, Tangerang is a living laboratory of the labour movement. Known as a place where manufacturing companies could tap abundant cheap labour easily, Tangerang is also cited in the literature on Indonesian labour because of its labour unrest and rampant incidence of labour rights violations. The major demonstrations and strikes can be read as the pulse of the labour movement in Tangerang.[12] Labour unrests, which have

9 Currently, Tangerang is administrately divided into Tangerang City, Tangerang Regency, and South Tangerang City. Unless otherwise noted, Tangerang in this text refers to all three administrative units.

10 Through Presidential Instruction No. 13/1976, Tangerang was integrated into the greater Jakarta area (Jakarta, Bogor, Tangerang, Bekasi), which later on became Jabodetabek, by including the city of Depok.

11 This slum is inhabited by low-income workers, who tend to live in semi-permanent rental houses around factories in order to save on transportation expenses.

12 One of the events that are recorded are the major strikes carried out in 1999 by workers of PT Mayora, a producer of processed foods. Tangerang once again attracted attention in 2001 when the case of Ngadinah Binti Abu Mawardi caused public outrage beyond Indonesia. The board

Table 1. The Main Industrial Parks in Tangerang

NAME	AREA (HA)	NUMBER OF TENANTS COMPANY
Cipta Cakra Murdaya Balaraja Industrial Estate, Balaraja.	300	Na
Kawasan Industri dan Pergudangan Cikupamas, Cikupa.	250	118
Millennium Industrial Estate.	400	57
Taman Tekno Bumi Serpong Damai, Serpong.	200	664
Balaraja Industrial Park, Balaraja.	300	Na

Source: Adapted from various sources, including the Regional Investment Coordinating Board (BKPMD) of the Banten Province

been frequent since the 1990s, illustrate the complexity of economic and political relations between various interests of capital, state policies and heavy-handed measures.

Once part of the old Kingdom of Banten, Tangerang became a site for leased plantation lands under colonial rule, and thus has a long history of violence. Resembling old-time warlords who used to be employed by landowners to protect the plantations, today, companies hire thugs in order to secure land acquisition and protect their factories. These modern warlords are also needed to silence the protest from the people, usually over noise and pollution caused by the factories. Furthermore, nowadays it is common that thugs are involved in the huge business of supplying labour to the factories.[13] As happened in many other industrial towns, the scarcity of jobs, combined with the monopoly of access to job opportunities have put millions of job seekers in a very weak position. Last but not least, local thugs organized in youth groups, which sometimes under the banner of (local) ethnic group and identity, are often used by the companies to disperse labour demonstrations and threat trade unions. The involvement of private security actors in industrial relations is an additional component inside a tinder box that catalyzed the growth of the labour movement in Tangerang, a city which had already been loaded with complex social and environmental problems.

member of a union who had worked at the shoe factory Perbupas of the PT Panarub Diwkarya, which is a supplier of the brand Adidas, took part in a strike and was arrested afterwards.

13 See 'The Faces of Old Banten is More and More Becoming Perfect (*Wajah Banten* Lama Makin Sempurna)' (Kompas, October 7, 2009), which describes the practices of employment agencies in Banten. Generally, their practices violate existing regulations.

Tangerang is the birthplace of the Karya Utama Union Federation (FSBKU), one of the few labour organizations of the New Order (Suharto dictatorship) era that have survived until today. The origin of the union can be traced to a group of migrants who had mostly come from different cities of neighbouring Javanese-speaking provinces in mid-1990s. They initiated a kind of informal self-help group which met occasionally to share their daily problems.[14]

The name of the organization, the Circle of Karya Utama[15] was introduced in 1997, when two members of two groups were dragged to a military office. In the wake of the economic crisis and the heated political situation, the military kept alert to any kind of labour meeting. Additionally, in different cities some labour activists formed alternative unions that were not affiliated with the state-sanctioned union. Under interrogation in a military office, the two PKU members made up a story and said that their circle was only a gathering of workers who have all migrated from Java. They said that their group's name was *Paguyuban Karya Utama* (PKU), a Javanesse-Sankrit-sounding name.[16]

In the wake of the political transition after the fall of Suharto, the PKU went through a number of formalizations. They learned that an informal group like theirs could not be registered at the local labour office. And they could also not be represented in labour disputes and bipartite forums.[17] In 2000, PKU member units from different factory-level unions therefore formed formalised factory level unions (SBTP); while workers from various companies, i.e. those that had not been organized in a factory-level union – for instance union members who had been laid off and could therefore not join the factory level union – formed the Karya Utama Labour Union (SBPKU).[18] In August 2000 the two types of grouping then formed the Forum of Company Level Labour Unions (FSBTP),

14 Although in 1995, the average minimum wage rose by 20 per cent (from Rp 84,000 to 100,000), the prices of basic needs continued to climb up until the economic crisis of 1997-1998. The price of rice rose from Rp 720 per kilogram to Rp 920 per kilogram. The group discussed and sought ways to overcome low wages and skyrocketing daily needs.

15 PKU was pionered by 13 workers. Their names are mentioned in a brochure that was printed on the occasion of FSBKU's 10th anniversary: Bardi, Tari 'Tepos', Tari 'Tomblok', Siti, Murofiqoh, Rostinah, Sugiyanto, Makidi, Surahman, Rusdianto, Tomas 'Tong Bajil' Timbul, Siti and Ami.

16 'Karyo' means Work, 'Utomo' means Priority. Hence 'PKU' could mean 'Prioritizing real jobs' as a characteristic of the organization.

17 Before the installment of a more centralised Labour Court (20ss), disputes were settled by the local Labour Dispute Settlement Committee (P4).

18 SBPKU is a kind of working group for labour organizing in industrial areas. It is not tied to particular plant-level unions. Everybody, wherever their workplace, whatever their work status, could be a member of PKU.

an embryo for the formation of a federation. The Karya Utama Labour Union Federation (FSBKU) was declared during its first congress on 22 April 2001.[19]

In their early years, the FSBKU grew by gaining knowledge and experience in handling various types of labour cases. Like other unions, during the waves of informalization in the early 2000s, they faced new pressures. Factories made use of a new pattern by dismissing permanent workers and rehiring them as contract workers. This severely affected the union, and between 2002-2004, its membership has declined sharply.[20]

Currently, the FSBKU is an umbrella of 29 labour unions that are mostly situated in Tangerang and North Jakarta and which operate in various industrial sectors. Many years of experience in labour disputes and protest against policies that disadvataged workers seem to provide a solid basis for the union to boil down its advocacy agenda: to resist the low-wage policy, to fight union-busting, and to reject contractual work and outsourcing practice. These three agendas more or less reflect the most pressing labour issues of this time.

How does the union face the challenges of flexibilization in its advocacy work? Knowing that administrative and legal processes can be very slow and ineffective, from its early years onwards, the FSBKU organized mass protests. To make their demands heard, they spread large banners, organized sit-in protests, paraded, and set up tents in front of factory plants or even in front of the labour office. All forms of protests that nowadays are familiar to the labour movements elsewhere in Indonesia, have been practised in Tangerang since early on.

FSBKU members seem fully aware that workers need to be united to defend their interests. Repeatedly, the union sought to initiate larger alliances. An early attempt was already carried out in the early 2000s, when they initiated the Cisadane Labour Committee. During the subsequent years, the union involved in other alliances at the local level, such as the Alliance Against Dismissal, the Working People Alliance, the Labour Alliance, INSIST, and The Alliance of

19 The first congress elected Dwi Agustin as a chairwoman and Anwar Ma'Ruf as a Secretary General. At the time, FSBKU members consisted of eight factory-level unions plus one cross-factory union, and the total number of members reached 5,650.

20 A labour dispute at PT Sarasa Nugraha in 2004 illustrates this situation: The case started when the garment company, which had supplied various international brands, evaded a wage rise in accordance with the collective bargaining agreement. The management argued that the risk of financial loss motivated it to suspend the wage increase. It closed the factory and 1,652 workers were dismissed. The situation suggested that the factory closure was only a tactic to reduce the number of permanent workers: the company had closed down the factory only to reopen it afterwards and outsource a number of tasks to other factories which employed contractual workers. Furthermore, the management offered money to workers who were willing to change their status from permanent to temporary employment.

Trade Union in Tangerang. During the high tide of labour protests in 2012, the FSBKU joined the Greater Tangerang People Alliance, which fought successfully to raise minimum wages.

Apart from the alliances that the FSBKU joined in order to respond to relevant labour issues in Tangerang, they also engaged in efforts to build more permanent alliances and formed a larger union confederation on a national level. A serious attempt was undertaken in 2004 when the FSBKU took a critical role in the formation of KASBI, a grouping of the progressive unions. Due to some unresolved differences, the FSBKU left KASBI in 2010. Later on FSBKU played a key role in initiating another confederation named National Union Confederation in November 2011.

The history of FSBKU might stir up our curiosities: How could the union survive from its embryonic years in Suharto's authoritarian period? Undoubtedly, the union has managed to remain persistent in many aspects, to retain its relevance in perceiving the current labour situation, and younger cadres have more or less constantly joined the union to pursue its longer-term objectives. The subsequent sections will discuss the development processes within the FSBKU and pay particular attention to its practices of educating union activists.

Seemingly the main factor in the persistence of the union is its approach on case handling – a routine task, since cases from plant-level keep coming and might happen at any time. The union strongly urges its members to be a 'labour lawyer' for themselves and defend their own cases. The FSBKU coined the term 'labour lawyer' to describe their encouragement of ordinary workers to obtain detailed knowledge of labour laws, in order to compete with licensed lawyers. Especially in the stage of member recruitment, the FSBKU organizers always emphasise that their union is not a service union, where the union provides legal service while the only obligation its members have is to pay union fees on time. They object to this type of relationship. FSBKU organizers share the firm belief that to be a union member means to defend oneself, to organize at the grassroots level, and expand the union's influence at least at the plant-level. When handling cases, FSBKU organizers encourage workers to examine each aspect of the case, including the overall labour situation in the workplace. Based on their rich experience, the union's educators provide information about legal ramifications that may arise, but the workers that involved in a particular case should take up responsibility, which means to take decisions for themselves.

It is also interesting to note on how, in their daily operation, the union uses a detailed intake form that groups of plant-level workers fill out in order to

examine their workplaces. The intake form will help the workers to recall and inquire into basic facts: the labour situation, rights violation, and conditions in the workplace, etc. Through gathering information collectively, the plant-level workers' groups initiate discussions and group learning processes. In most cases, such learning processes are a necessary step to dismantle corporate abuse, and from that point, raise consciousness and eventually challenge corporate power.

While many unions are still struggling to build structured or programmed education activities, and some even allocate neither appropriate attention nor resources for education, for about a decade the FSBKU has run its 'Night School' program. This regular education program is addressed at long-time activists from their own and also other unions who are intersted. The union is aware of the fact that having courageous labour lawyers is not enough to push forward their struggles. Labour activists should possess advanced critical and analytical skills. The night school class covers an education on an advanced level. The topics of the curriculum cover different subjects including the history of Indonesia, global labour movement, basic political economy, skills to assess the current political-economic situation, women's rights, and social movements. Additionally, the weekly night school intends to secure the regeneration of labour educators. The curriculum therefore also includes a session on how to manage and facilitate a labour education. The night school is held every Saturday. It is a convention that the two last batches of the program are obliged to run and facilitate the subsequent night school program. In that way, the FSBKU multiplies the much-needed labour educators.

Based on its strong commitment to the grassroots level, the union continuously gains knowledge and analyses the devastating impact of flexibilization. On many occasions they assist contractual and outsourced workers, who desperately ask for help and falsely assume that they can reclaim their rights as long as they obey the laws. Indeed, it involves a long collective learning process, including filling in the intake form, studying and sloving the case together, etc. and supporting these workers to regain confidence to defend their rights, as the impacts of flexibilization leave their marks on them. Afterall, workers draw a conclusion: within the current flexibilization regime, it is almost impossible for workers to plan the future for themselves and their families. Workers have every reason to resist flexibilization. As Sugiyono, a long-standing activist who serves as the Secretary General of the FSBKU put it, 'please observe what they did to you, and don't let them steal your future.'

Conclusion

Resonating with research results from other geographical contexts, the movement of capital affects spatial planning, land use, population demographics, including the patterns of people livelihood. However, this is not a mere monopoly of mobile capital. The labour movement also has, although limited, influence on the conditions of urban space (Herod, 2001). This chapter has discussed the tactical and cultural steps taken by the Indonesian labour movement in facing the challenges of flexibilised labour market. Since the early years of the industrialization during the dictatorship era, the maintenance of industrial conditions in the two cities, Pekalongan and Tangerang, has been secured through the supply of abundant cheap labour, provided by the local population in Pekalongan and surrounding areas, and by migrant job seekers venturing from various areas in Java and Sumatra islands to the crowded city of Tangerang. The conditions in the two sites showed that the commodification of cheap labour has become a mainstay of the industry to attract investment. But the workers do not necessarily become passive victims in the ongoing flexibilization of the labour market.

As this chapter has shown, poor protection of workers' rights and uncertainties in the employment status of workers in the flexible labour market do not dampen the decision of workers to join unions. On the contrary, although sporadic, workers slowly start to engage in finding solutions to the challenges. Patterns in management strategies encourage the workers to challenge the devastating impacts of a flexible labour market. Through the reflection of their experience in the factory, workers experience a leap of consciousness that indirectly motivates them to resist the control that imposed by the factory management.

The National Workers Union (SPN) in Pekalongan has transformed its organizational strategies and engaged with local communities. Thus it could bring about a meaningful change in the lives of workers and the general public in Pekalongan. Meanwhile, the Karya Utama Labour Union Federation (FSBKU) in Tangerang encourages workers to critically and independently understand the problems that occur at their workplaces so that they can seek possible changes. Both unions have sought various strategies to improve workers' collective bargaining. Thus, they have also changed the conditions of urban space.

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CHAPTER NINE

Fighting the Giant and Scoring Victories: The Struggle of Workers at NXP Semiconductors in the Philippines

by DAISY S. ARAGO

Introduction

On 4 May 2014, the management of the NXP Semiconductors Cabuyao, Inc(hereafter NXP) called 24 officers of the NXP Workers' Union (hereafter NXPSCIWU) for a meeting that the officers thought was simply a continuation of their negotiation for a new collective bargaining agreement. To their utter surprise, however, they were handed a decision, dismissing them from their jobs effective immediately. NXP accused them of leading an illegal strike on April 9, 17, 18 and May 1. Subsequently, they were escorted out by the company guards and the Philippine National Police-Special Action Force, and were barred from working since then.[1]

The NXP move stunned the union, but not for long. Despite the practical ban against them, NXP workers met this clear attempt at union busting with a mixture of continuous shop floor actions and mass protests inside and outside Light Industry and Science Park I (LISP I), strengthened further by pressure on the company from national and international labour organizations. After four months of persistent struggle by the workers, NXP brought back 12 of the 24 dismissed union officers and inked a new CBA, the 11th agreement since the union was established.

In a conference in December 2014 an industry observer from the International Campaign for Responsible Technology-USA commented, 'It was the most successful 'strike' in electronics industry I had known recently.' The

1 Interview, Reden Alcantara, 27 February 2015.

union in fact did not declare a strike, but engaged itself and its supporters in what they now call as emerging creative forms of resistance that can challenge formidable hindrances and score gains against the 'no-union, no-strike' Special Economic Zones (SEZs) in the Philippines.

The workers and their union officers, however, were quick to emphasize that attacks by the multinational giant to weaken their union and undermine their hard-won gains did not happen only in 2014, but have been deeply and historically entrenched in the company's attitude towards CBA negotiations for the last three decades. The union successfully withstood these attacks, a feat that workers in other factories in LISP I had seen and are now trying to emulate in their own bid to organize. Even months after the protests, the NXPSCIWU experience and the mass movement it was able to create are still being talked about as a reference point for organizing and mobilizing in the semiconductors and electronics industry, as well as in other economic zones.

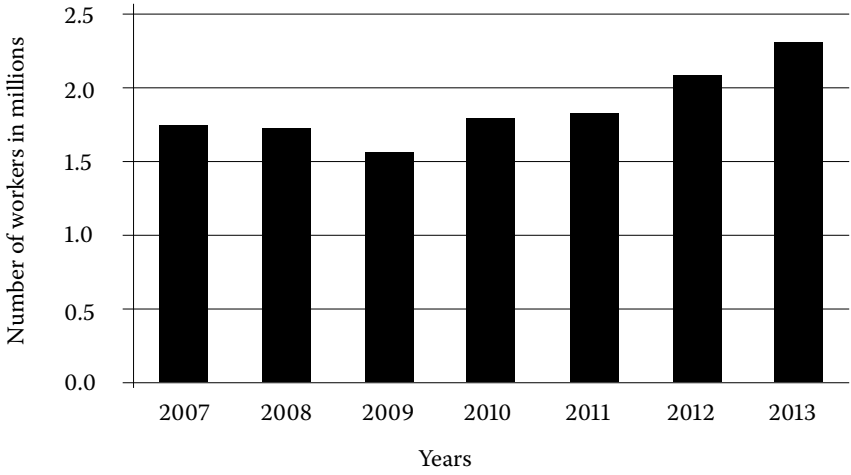
This chapter looks into the various forms of resistance that NXP workers undertook to defend their union and their gains against the changing contours of NXP's corporate policies and practices, as well as the national laws that only serve to facilitate and strengthen the same. It discusses the significance and impact of the NXP workers' struggle against corporate greed and neoliberalism, and the lessons that other workers and trade union movements can learn from it.

Background and Context

The Semiconductors and Electronics Industry in the Philippines

The Philippines provides about 10 per cent of the world's semiconductor manufacturing services, including for mobile phone chips and microprocessors (Lema, 2011); 50 per cent of the world production of 2.5' hard disk drives; and 10 per cent of the world production of 3.5' hard disk drives. The semiconductors and electronics industry in the Philippines is divided into semiconductor manufacturing services and electronics manufacturing services. It is export-oriented and dominated by multinational companies; 72 per cent of the companies are foreign-owned. Majority of the companies are based in special economic zones in CALABARZON region – composed of Cavite, Laguna, Rizal, and Quezon in Southern Luzon – Cebu, and Central and Northern Luzon. Semiconductors and Electronics *Industries in the Philippines* Inc. (SEIPI) states that the industry has a greater economic impact than the other industries, citing that US$ 1 billion in investments created US$ 10.5 billion worth of exports from

Figure 1. Employement in the Semicon and Electronics Industry



Source: SEIPI 2015

2010 to 2012. It further says that PHP 1 billion in investment growth created about 620 to 1,408 additional quality jobs in the economy.

Electronics and semiconductor exports amount to 28 per cent of the gross domestic product (GDP), posting some $21.6 billion in revenues, equivalent to 40 per cent of the total revenues in the country in 2013. In 2014, electronics and semiconductors products remained the country's top export, amounting to US$ 24 billion or the equivalent of about 42.2 per cent of total exports (Official Gazette, 2014). Industry exports go primarily to countries in Asia (70 per cent) and the US and in European countries (22 per cent) (SEIPI, 2012). The industry employs 331,000 direct workers and provides indirect employment to 2.3 million workers. This accounts for about 6.4 per cent of the total estimated number of people employed in the country. The calculation of the number of indirect employment in the industry was based on a study by Dr. Bernardo Villegas of the Center for Research and Communication in October 2004, citing that for every direct employment, the industry creates seven indirect employments. How the study arrived at such a calculation and what constituted indirect employment were not explained, but since then, it has been used by SEIPI as basis for estimating employment. Official data is also based on SEIPI-provided estimates.

However, a random survey conducted among workers indicates that the industry thrives on contractual or temporary labour. A 2008 study by the Centre for Trade Union and Human Rights conducted in CALABARZON region reveals

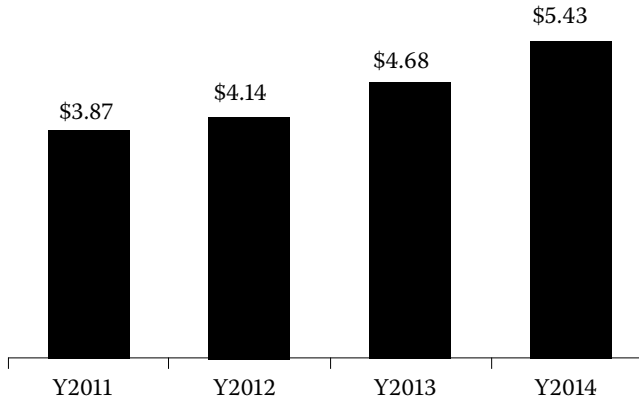
that three out of five workers in the industry are temporary or on short-term contracts. The industry is not only known for its massive dependence on flexible labour, but also for its anti-union labour relations. To date, only a handful of trade unions exist in the industry; unionists have disclosed that organizing workers in the sector has been most challenging. Attempts to organize are frustrated, either by mass dismissal or company closures such as the case of Hoya Glass Disk Philippines, Inc. in 2014. In Pentax Corporation in Cebu, agency-hired workers who composed more than 80 per cent of the company's workforce were oriented to dissociate themselves from anyone or any organization related to trade union, as they were told this would cause their dismissal (CTUHR, 2012). In LISP I where NXP Cabuyao is located, the NXPCIWU, prior to the recent protests, was the only existing independent trade union. CTUHR monitoring and documentation points to two major factors in extremely low level of unionization in electronics and semiconductors industry: (1) the pervasive employment of contractual workers who are virtually prohibited to organize or join trade unions or associations, and (2) the location of such companies, almost all of which are within the Special Economic or Export Processing Zones where the 'no union, no strike' policy is strictly enforced by the government and companies (CTUHR, 2012).

The NXP Global

NXP Semiconductors N.V. (NASDAQ: NXPI), prides itself in creating solutions not only for what it calls smarter communication but also in a drive to outsmart competitors. From a company based in Eindhoven, the Netherlands, it has expanded its operations in 25 countries in the world through astute strategies from selling shares, divest certain products to private equity group when profit was down, buying back shares when it is more profitable, and merging with other companies to maintain dominance in world production share. NXP designs, manufactures, and sells high-performance, mixed-signal semiconductors. Building on its expertise, NXP claims to have driven innovation in the automotive, identification and mobile industries, and in application areas including wireless infrastructure, lighting, healthcare, industrial, and consumer technology and computing.

NXP invests heavily on research and development, gathering about 3,500 engineers worldwide. Combined with astute industrial and labour policies as well as favourable government support in its manufacturing and test sites particularly from Asia Pacific region, it is able to increase its sales since 2011 with gross product revenues amounting to US$ 5.433 billion in 2014 (see chart). It claims to have positioned itself to outperform industry competitors through

Figure 2. NXP Global Product Revenue Growth, year on year (billions)



Source: NXP Company presentation, February 2015

a host of advantages: (1) strong IP and patent portfolio; (2) broad mixed-signal product; (3) differentiated process technology; and iv) acknowledged leadership in cryptography, low-power radio frequency, high-speed interface and mixed-signal MCU systems design.

The company's test and assembly sites are located in Bangkok, (Thailand), Cabuyao (Philippines), Guangdong (China), Hong Kong, Kaohsiung (Taiwan) and Seremban (Malaysia), with an overall estimated number of workers at 24,000 (NXPSCIWU, 2014)).NXP supplies to 10 major global brands: Apple, Bosch, Continental, Gemalto, Huawei, Delphi, Giesecke/Devrient, NSN, Panasonic, and Samsung. It maintains partnership with large distribution companies such as Arrow, AVNET and WPG.

In 2013, NXPcaptured the 15th rankin the world's largest suppliers of semiconductors, up by two points from 17th in 2012 (Bowers, 2013). In 2014, it slipped to 16th, but with the merger with Freescale (ranked 17th), NXP-Freescale is expected to jump at world's 6th in the semiconductors industry. 2014 was a banner year for the global industrial semiconductor market (IHSMarkit, 2015). NXP alone topped the Small-Signal Discretes sales worldwide and remains a global leader in standard products (NXP, 2014).

NXP Semiconductors Cabuyao, Philippines

The NXP facilities in the country are located in a nine-hectare property inside LISP I in Cabuyao, Laguna. The 173-hectare LISP I was established in 1991 by

Science Park Philippines, Inc. (SPPI) as the first privately owned industrial estate to operate as a Special Export Processing Zone under the Philippine Economic Zone Authority (PEZA). It has 92 companies operating inside it, 66.6 per cent of which are Filipino-owned, 24.4 per cent are American companies and 10 per cent are Japanese. It claims to employ more than 28,000 workers. A few years later, LISP II was established. The Philippines has 300 operating economic zones, only four of which are government-owned (PEZA, 2013).

LISP I and LISP II (2 of the 300 SEZs) are home to Fortune 500 companies and major multinational companies, including Procter & Gamble, Unilever, Pepsi, NEC, NXP, and ST Microelectronics (both formerly Philips Electronics), First Sumiden, H.B. Fuller, Nippon Paint, and Continental Temic, to name a few. Top Filipino export and manufacturing corporations in the area include Concepcion Industries, Ionics Inc., and Fastech (SPPI, 2015).

NXP started operating in the Philippines in 1981 as Philips Semiconductors Philippines, Inc. (PSPI), based in Las Pinas, Metro Manila. In 1992, it moved to LISP I while retaining its name to take advantage of privileges accorded to locators in economic zones. In 2006 it became NXP Semiconductors, Inc. Cabuyao Philippines, following the sale of its parent company in the Netherlands. In 2015, NXP Semiconductors Cabuyao continue to serve as a major assembly and test centre for more than 5,000 different semiconductor products exported and supplied to various multinational brands(NXP, 2014).

In addition to the 10 global buyers, NXP Cabuyao also supplies for major brands such as Dell, Asus, Continental, Siemens, Flextronics, Avnet, and Foxconn, and produces parts for military equipment as well.The company's workforce rose, declined, and rose again as the management implemented re-structuring and cost-cutting measures to remain competitive. Aided by Philippine labour and investment laws that are openly supportive of capital expansion but averse to labour rights, NXPs global policies, particularly those related to employment and labour relations, were carried-out quite efficiently.

Thus, in many ways, NXP's growth and development are not only a witness to but also a reflection of the evolution of Philippine labour laws and labour relations, particularly under the WTO regime. Changes at the NXP production plants, driven by combined local and global corporate policies and legislations, have also found their way into most manufacturing workplaces in the country. Such policy changes had for several years been responsible for altering the course of trade union organizing that workers and trade union organizers have to traverse.

Trade Unionism and the Struggle for a Better Collective Bargaining Agreement

An Overview of Trade Unionism and Labour Relations in the Philippines

Since the Martial Law era (1972), trade unionism in the Philippines has been shop floor-based and only one union, certified the as sole and exclusive bargaining agent (SEBA), is authorised to negotiate a collective bargaining agreement (CBA) in each company, whenever and wherever such a union exists.

The 1987 Constitution provides that all workers have the right to form unions from the first day of their employment, but the labour law 'reforms' made in 1989 restructured not only the country's labour relations, but also the employment set-up, still to the detriment of the workers.These so-called 'reforms' made to the Labour Code of the Philippines (known as Presidential Decree or PD 442 by Republic Act or RA 6715) are largely responsible for legally weakening the trade union movement in the country. The new law, also known as the Herrera Law named after then Senator and Trade Union Congress of the Philippines[2] secretary general Ernesto Herrera, is widely held to have: (1) legalised the practice of flexibilization or contractualization; (2) extended the term of office of a certified local union and the term of the collective bargaining agreement; and (3) codified certain Martial Law labour legislations that were problematic. These legislations include the granting of awesome power to the Secretary of Department of Labour and Employment (DOLE) to assume jurisdiction during disputes, such as stop the strike or notice of strikes in an industry which, according to the Secretary's opinion, is indispensable to national interests; and anti-strike/anti-picketing laws.[3]

By this law, all unions must apply for registration at the DOLE as either an independent or affiliate of an existing labour federation. The registered local trade union must be certified as the sole and exclusive bargaining agent (SEBA) either

2 TUCP or Trade Union Center of the Philippines was established in 1975 by the Marcos government with support from Asia-America Free Labor Institute (AAFLI), and was and is publicly known to workers as pro-government. Ernesto Herera, who passed away on 29 October 2015, authored the much criticized RA 6715 or the New Labor Code of the Philippines.

3 The anti-strike law refers to the imposition of a mandatory cooling-off period of 30 days if the issues involved in the Notice of Strike are gross violations of CBA or a 15-day cooling-off period if the issues are related to union-busting, and the need to conduct strike vote, the result of which must be submitted to the DOLE, and to wait for seven days before a legal strike can commence (BP 130). The anti-picketing law refers to the prohibition for striking workers to block the entry/exit points of people, vehicles and goods during the strike, and picketing must only roving /moving picket, less risk of being declared illegal.

through management voluntary recognition, which rarely happens especially for an independent and genuine union, or by winning an often hotly contested certification election (union election), before it can negotiate for a collective bargaining agreement (CBA). Whether or not a local union is affiliated, it must directly negotiate its CBA with the management of the enterprise; in practice, however, there are cases where labour federations do the negotiation and simply hand the copy of the agreement over to the workers and union members. Common cases of this involve the 'yellow' unions or federations, or those believed to be pro-management, company-organized and/or pro-government.

The union at the then Philips Components Phils., Inc. (PCPI) was organized just a year after the company started operations in the country and way before the so-called labour law reforms. The technicians and quality inspectors led the organizing of the PCPI Workers' Union (PCPIWU) on 1 December 1982 in the company's former Manila plant. It did not take long for the union officers to get the support of the majority of the company's workforce into its membership. mainly owing to two factors: i) the strength of the anti-Marcos dictatorship struggle that drew both spontaneous and organized workers to challenge the Martial Law repression; and ii) the union's immediate affiliation with the National Federation of Labour Unions-Kilusang Mayo Uno (PCPIWU-NAFLU-KMU), which provided the PCPIWU with organizing and education support. 'Pioneer union officers' credited NAFLU-KMU for the leadership consolidation and guidance they received since the formation of the union.

Despite the legal and practical restrictions imposed by the management and the government, the PCPIWU-NAFLU-KMU ably weathered and defied the challenges. It was able to maintain the old way of negotiating a CBA every three years, and at the same time complied with the requirement of holding a certification election every five years. In its 33 years of existence, the union was rocked by differences and dissension in the leadership, and by the division in the NAFLU-KMU itself in the 1990s, but PCPIWU, now NXPSCIWU, remained affiliated with the same labour federation until today. It also remains as one the strongest local unions under KMU, and the biggest in the electronics industry.

Union's Struggle for Higher Wages and Improved Benefits Beyond Those Legally Mandated

The company's recognition of PCPIWU-NAFLU-KMU in 1982 was immediately followed by the negotiations for a collective bargaining agreement (CBA). Shortly thereafter, the management and PCPIWU-NAFLU-KMU signed the first three-year CBA.The agreement won for the workers a wage increase of 20-20-10, that is, a 20-per cent increase in daily wage (with the minimum

wage as the base reference) for the first year of CBA term (1983); a 20-per cent increase for the second year (1984); and a 10-per cent increase in the third year (1985). In addition, the agreement also included an automatic, across-the-board integration of mandated daily wage increases ordered by the national government (NXPSCIWU, 2014).

In 1983, the national minimum wage was only PHP 9.00 per day or US$ 1.125[4], and was increased to PHP 20.00 per day or US$ 1.00 in 1985. This amount served as the reference base of the CBA percentile daily wage increase given at each year (Mike, 2009). Workers in the company are either paid daily (mostly production workers) and monthly (technicians and some inspectors), a system that continues until today. As the last year of the PCPIWU-NAFLU-KMU and its CBA term in 1985 drew near, the union braced itself for the next union election and another round of CBA negotiation by consulting members on the demands that union should present and bargain for their rights. Key members participated in the anti-dictatorship struggle simultaneously while engaging its membership in political education to hone the union's consolidation. When the union election was held, PCPIWU-NAFLU-KMU won another three-year mandate, but a CBA negotiation deadlock prompted the union to stage its first strike in April 1986.

The strike paralyzed the production for 19 days, prompting the management to go back to the negotiation table and eventually sign the second CBA. However, with only 15-15-10 per cent wage increases for three years, it was a little lower than in the previous years.; Previous CBA that states that all government wage orders shall be automatically integrated into the daily wage was retained.

The government of Corazon Aquino that followed the dictatorship, however, did not issue any national wage hike orders, to the dismay of the workers who helped catapult her to power. In 1987 and in 1988, PCPIWU-NAFLU-KMU joined the national people's strike calling for minimum wage increases, forcing the government to legislate a PHP 25 per day (US$ 0.92) and PHP 10 per day (US$ 0.37) wage increases, respectively. As provided in the CBA, the Philips management integrated the national wage increases into its workers' wages. In the years that followed, the PCPIWU continued its quest to improve the economic condition of its members. In each CBA cycle, the union focused its efforts into members' education, to prepare for the next round of negotiation, making Philips workers one of the better paid in the industry. However, while the union made initial successes in increasing the economic benefits of its members, some of the union officers and labour activists observed that the union's leadership back then limited its member's actions only in local (shop floor) issues, such as

4 In 1983, the value of peso to a US$ was USD1for PHP 8, but slipped to USD1 for PHP 20 before EDSA revolution and descended further to PHP 27 to a dollar by 1989.

CBA negotiations, separating them from active participation in national issues, a union's practice in the early days. Some officers thought that this was far too narrow, with members becoming unconvinced of involving themselves in other issues, such as the national strikes, as these are deemed to be too political. Thus, when amendments in national laws and policies occurred impacting the workers, the union members felt lost in the myriad of changes.

The Dawning of Battle against Neoliberalism

In 1995, Philips company joined the bandwagon and decided to move its production plant to LISP I in Cabuyao, Laguna – one of the several privately owned SEZs in the province. The decision came when the term of the fourth CBA was about to expire, and workers were already preparing for the next round of negotiations. As wages were legally lower and unions were practically banned in the SEZs, the company's move distressed the workplace seriously.

The fear of diminution of benefits and union busting at LISP I in 1995 was not without basis. Republic Act 6727 or the Wage Rationalization Act of 1989 completely altered the system of wage fixing in the country and legally reduced the minimum wages in places outside Metro Manila. Previously, minimum wages for all workers are fixed by Philippine Congress and changes are almost always across-the-board. Under this law, wage setting was handed over to the Regional Tripartite Wage and Productivity Board (RTWPB), and collective bargaining agreement (CBA) was designated as the primary mode of setting wages and other terms and conditions of employment. The law was passed when only 10 per cent of the country's labour force was unionised and when the number of workers covered by the CBA was even lesser than 10 per cent.Authors of the law argued that RA 6727 aims to enhance employment generation in the countryside through industry dispersal, and to allow businesses and industries reasonable returns on investment, expansion and growth, while giving the workers the chance to enjoy the fruits of their labour.

Contrary to the law's stated aim, however, the effect on workers was immediate and harsh, as companies scampered out of Metro Manila to exploit the lower wages in the countryside. Workers in Metro Manila or the National Capital Region supposedly received the `highest' wages, while workers received lesser and lesser as their locations inched farther away from the National Capital Region. Complementing this law is the Special Economic Zone Act of 1994 (RA 7916)[5], passed as the country prepared to embrace more liberalised trade and

5 RA7916 amended, integrated and consolidated all previous laws, notably the Presidential Decree No. 66 issued on 20 November 1972 and subsequent Presidential Decrees and Executive Orders related to the creation of Export Processing Zones or Free Trade Zones and the Export

investment under the WTO regime. The implementation of RA 7916 spurred the creation of various special economic zones throughout the country, almost a third of which are located in provinces south of Manila collectively known as CALABARZON region.

Soon after the law became effective, multinational companies and their partners' local big businesses were given access to land by the government; they were then quick to start building their privately-owned special economic zones in CALABARZON region and relocate their production plants originally based in Metro Manila. In addition, the 'no union, no strike' policy tested in public economic zones in the early 1980s was implemented and strengthened in these newly opened SEZs. Attempts to organize were violently crushed until local unions ceased to exist. Thus a mixture of fears of reduced wages and monetary benefits, and outright union prohibition in LISP I rallied not just the union members but the entire workforce to consent to the relocation plan provided that the union's demands are met. The union demanded that the transfer must not result in diminution of wages and benefits and other CBA provisions, that transportation shall be provided, and, most importantly, that the union must be allowed to continue. Several negotiations later, accompanied by displaying of placards with their calls, the company caved in.

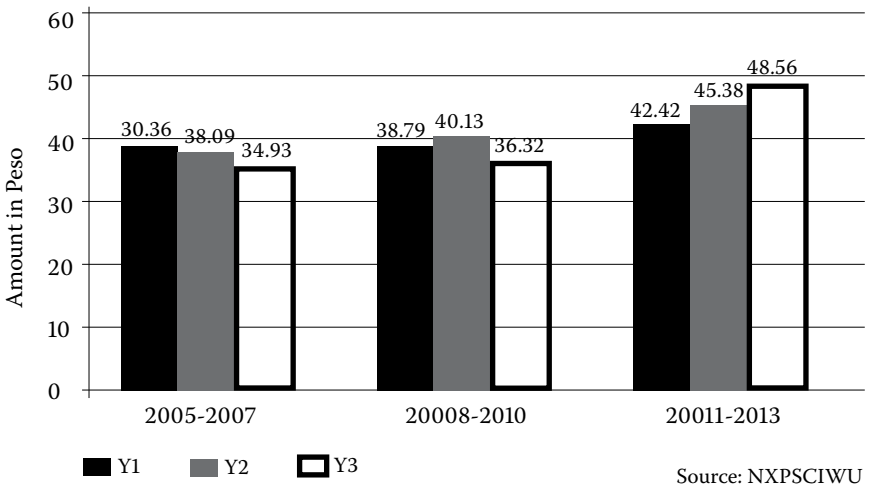
Philips then moved to LISP I in 1995, and subsequently changed its name to Philips Semiconductors Philippines, Inc. (PSPI) a name which was also adopted by the union into its name to become PSPIWU-NAFLU-KMU. Thus, the union's arrival in CALABARZON region was received by various camps – including the trade union movement, Zone authorities, local government units and companies – with keen and calculated interest.Indeed, the dire effects of the twin legislations were quickly felt by the PSPI. In the fourth CBA negotiations at Philips Semiconductors' new home at LISP I, the union began to feel the company 'calculated move to take something away from the workers in exchange for wage increases. For example, soon after the CBA was signed, production quota was raised; the implementation of the Company Rules and Regulations (CRR) and Code of Conduct became stricter; and the hiring of temporary workers began.[6]

Changes in management decision-making also became more apparent. NXP Cabuyao simply implemented the corporate global strategy designed at NXP headquarters without consultation with the union. By 2008, the union was directed to NXP Asia operations management representatives to negotiate their CBA instead of the local management. Local executives only became facilitators between the union and the representatives of the global giant. Negotiations

Processing Zone Authority in the Philippines.

6 Interview, Alet Mariposque, 15 April 2015.

Figure 3. CBA Daily: Wage Increases Gained Per Term in Peso



Source: NXPSCIWU

took much longer than in the previous years. However, changes in the policy environment, pushed the the union to strengthen itself and its members to participate and monitor the negotiation actively, thus, helped the union officers to weather the challenges.

Despite the NXP's several attempts to freeze or contain wage hikes, the union won significant increases. In the sixth CBA (1999-2001), the union negotiated and won a PHP 1,000 total daily wage increase spread across three years, thereby retaining the status of having one of the best paid workers in the country's electronics and semiconductors industry until today. In addition, their CBA gave the members non-monetary benefits, such as rice subsidies, increased number of leaves for union members, birthday leave; the biggest gain was having the union president work full-time for union affairs while still getting paid (NXPSIWU, 2014).

Battle versus Labour flexibilization and NXP's Moves to Contain the Growth of Union Membership

The practice of employing flexible labour in the Philippines intensified towards the end of the 1980s and broadened massively under the WTO regime. Labour flexibilization, locally known as labour contractualization, was legalised by amendments made to Article 280 and Article 106-109 of the Labour Code though the Herrera Law or R.A. 6715. Article 280 of the law states that 'the

employment status of a worker engaged in activities necessary or desirable in the usual business or trade of the employer shall automatically become regular after six months, except if the worker's employment has been fixed for a specific period of time' (Arcangel, 2014).

The exception referred to in the law became the general rule, as newly hired workers were contracted only for a specified period less than the prescribed six months, effectively enabling companies to skirt the law to accord regular status to their workers after six months and one day of employment. The amendments turned out worst as it is now exploited to justify the use of employment or labour agencies and student-trainees, eventually changing the features and types of labour flexibilization practices in the country.

One type is external flexibilization, which involved the use of contracting and subcontracting parts of the production processes to smaller, companies and the use of manpower or employment agencies. This was legalised by DOLE Order (DO) 10, DO 18-02 (repealed by DO-18-A) and the Dual Training System Act of 1994(ILS, 2000).[7]

DO 18-02 clarifies the rules and regulations governing contracting and sub-contracting, while the Dual Training System Act of 1994 allows companies to enlist additional employees at no or lesser cost from the rank of students of vocational and technical courses from government-organized or -accredited schools completing their academic requirements through on-the-job training in production. These students are commonly placed in electronics, semi-conductors and car manufacturing companies.

The second type of labour flexibilization is an internal one that seeks to intensify labour inputs with no or lesser cost, like multi-skilling, extended work hours, piece-rate and quota systems, compressed workweek etc. NXP. Then PSPI, was astute enough to take advantage of the said laws. Alet Mariposque, former union officer, recalls that following the approval of the Dual Training System Act of 1994, Philips inked an agreement with Laguna School of Arts and Trade to accept the latter students to work in its production plant. The agreement opened the NXP's door to employment of flexible labour almost the same time as its transfer to LISP I in Laguna.

NAFLU-KMU, to which the PSPI Workers' Union is affiliated, noted that flexibilization was to a certain extent expected, as companies in other SEZs in the

7 The Dual Training System Act of 1994 or RA 7686 aims to encourage increasing utilization of the dual system in technical and vocational education and training in both public and private sectors within the context of existing education system; enhance employability and productivity of graduates, strengthen training cooperation between agricultural, industrial and business establishments and educational institutions (Sec, RA7686).

province resorted to hiring temporary workers years after RA 6715 was passed.[8] Mariposque further observed that when the Philippines acceded to the WTO in January 1995 and when corporations began fiercely competing for market, PSPI stepped up the hiring of more graduates on a short-term basis and on fixed-term contract, thereby periodically increasing its workforce but without changing the size of the bargaining unit.[9]

Along with the fixed-term contract, PSPI also introduced the so-called European management style that saw the adoption or creation of a 'mini-company', that is, transforming each production department for it operate like a small company, where the appointed leader is responsible for meeting production quotas and maintaining good work behaviour amongst each member of the 'mini-company'. The system was piloted in such sectors/department handling the broadband communication base station, radio frequency-and glass diode assembly.

Further compounding this measure was Philips' adoption of the 3Ps or 'Performance, Punctuality, Productivity' system as the basis of the performance evaluation of each worker. Mariposque notes that the union opposed the schemes, as competition and division amongst workers are intensified when some union members were given certain powers to act like `managers' in the 'mini-company'. The union conducted information campaign, such as stickers posted in toilets and leaflets distributed in communities where workers live, to inform them of the negative effects of the said schemes.

The union argued that although external factors, such as government regulations and PSPI's global policies, influenced changes in PSPI industrial and management policies and practices, it was apparent that PSPI management introduced and implemented such changes to weaken the overall CBA negotiation and the union's position. The union further maintained that while the management remained open to talking to the union, it was trying to contain the growth of the union membership through controlled direct hiring, while opening its doors further to more short-term or fixed-term contract workers.

Citing contraction of global demands, by 2000 PSPI stepped up its cost-cutting measures and introduced the Voluntary Resignation Program (VRP) for workers with 10 years or more in service. Later, the scheme was opened to anyone who wanted to avail themselves of the program. After some engineers and highly skilled technicians resigned and joined other competitors, PSPI stopped the VRP. In 2002, it started implementing the first phase of the Mandatory Separation Program (MDSP) for workers who served the company for more

8 Interview, A Pascual, 15 April 2015.

9 Interview, Alet Mariposque, 15 April 2015.

than 15 years. Immediately, 300 workers and union members were removed from their posts.[10]

Sensing the negative effect of VRP and MDSP Phase I on the union, the management then enforced much stricter Codes of Conduct, limiting the number of leaves that employees and union members can apply for joining union activities. It also intensified its productivity monitoring and broached the idea that it relocates to China if the union demands, especially as regards wages become unreasonable. Other productivity enhancement schemes were also carried out on top of the 3Ps. Self-directed teams (SDT) were formed in business fulfilment group (BFG), allegedly to achieve what the company called Phillips Business Excellence (PBE/Best).[11]

In 2006, the company resorted to more labour flexibilization schemes and allowed the entry of contractual workers hired through manpower agencies, further changing the company's employment landscape. For instance, from a total workforce of 3,966 as in December 2014, regular workers only account to 34 per cent; contractuals stand at 50.42 per cent and indirect workers at 7.5 per cent. Indirect workers are engineers, technical experts and other employees who do not have direct participation in the production process, such as management staff and concessionaires. They are also not part of the appropriate bargaining unit. Thus, looking at the twenty years of the implementation of a mixture of laws and company schemes, it is not difficult to see that temporary/contractual workers now account for 60 to 70 per cent of the country's total 'employed' workers under different levels of employment relationships (Serrano, 2014).

Multinational companies like Dole Foods called this relationship as 'multi-dimensional' and 'multi-layer'. By employing varied levels of employment relations, companies are able to obscure and undermine the obvious and direct employer-employee relations with the aid of RA 6715 and other similar laws. In NXP's case, for instance, two-thirds of its direct labour are contractual employees of differing types determined by who hired them, even as they were all working for NXP and producing NXP products.

Reden Alcantara, former union president and one of the dismissed union leaders, explains that the labour flexibilization schemes implemented by NXP were, by and large, mechanisms to take back what the company had given in the CBAs. He noted that after each CBA conclusion, workers were forced to intensify their labour input, encouraged to think of ideas to increase productivity with increased efficiency at lesser cost, and to think like managers while sharpening the competition between them.

10 Interview, Alet Mariposque, 15 April 2015.

11 Interview, Reden Alcantara, 27 Feb. 2015.

Overcoming Cracks within the Union and the Dawning of the New Stage of Militancy

Despite the difficulties that the union faced, it met the new challenges head on. Rather than succumbing to management pressure, PSPI Workers'Union took the more militant path of battling labour flexibilization. At the same time, it began involving itself more actively in the actions outside PSPI against closures, harassments and other human rights violations in SEZs. It joined other workers from Southern Tagalog in a solidarity march dubbed as '*Sama-samang Tanggulan*' (collective defense), to protest against mass dismissals in other factories and in solidarity with picketing workers outside the gate of LISP 1. The protest was the first in 10 years since PSPI relocated in the area, and the first in LISP I.

As the political environment became more tensed in the mid-2000s and factories were marred by industrial distress, CBA negotiation at PSPI became a calculated testing arena of strength for both sides. In the eighth CBA negotiation in 2005, the union was surprised to find out that they will no longer be talking to local company executives, but to the representatives of Phillips Asia operations instead. The union nevertheless managed to ink another agreement that gave them a PHP 1,000 wage increase spread over three years and other benefits, including an increase in the number of union leaves for union official for a 240 days per calendar year for union activities to and one day of birthday leave with token to all members (CBA between PSPI & PSPIWU-NAFLU-KMU, 1 January 2005 up to 31 December 2007).

Mandatory Separation Program (MDSP): Cutting the Union Membership by Half

Celebrations proved too early for the union, however, as without warning, the management took back the wage increases gained through the CBA just a year after, and implemented the two-phased Mandatory Separation Program (MDSP) for all employees with more than 15 years of service. The measure was also part of the NXP's global policy of Lean Manufacturing and Redesign Program. From a high of more than 3,100 regular workers and union members, the union was left with just 1,300 members after MDSP. It also lost six union officers to MDSP, though they were allowed to continue working for another three years under the pretext of union transition.

In the same year, the semiconductors division was sold by Philips Semiconductors N.V. to Private Equity Group (KKR, Silver Lake, AlpInvest, Bain Capital and Apax Partners and AlpInvest Partners NV) and became what is now NXP Semiconductors. Philips Semiconductors Cabuyao, Inc. also changed its name to NXP Semiconductors Cabuyao, Inc. Like in the past, the

union took the new company's name into their own and became NXPSCIWU-NAFLU-KMU.

At the onset of the global financial crisis in 2007-2009, NXP Cabuyao carried out more labour flexibilization schemes. It attempted to implement a compressed work week, that is, 10 hours of work daily for four days, without overtime payment. Later, it announced that it would implement zero wage increase as a global company policy, and delayed the implementation of previously agreed increases and other benefits, such as rice subsidies, outpatient subsidy for those who are on sick leave, educational allowance, and conversion of unused sick leaves into cash. The management also refused to grant flexible loans (flexiloan) and the pro-rated 13th and 14th month pay for workers who were on prolonged sick leaves.

At the same time, NXP allowed Testech, a manpower agency to deploy workers in the production plant, initially as firewall and visuals inspectors. Later, however, Testech workers were allowed to perform regular jobs, though some of them were absorbed as NXP workers. The number of employees hired through the agency gradually increased.[12]

The loss of six union executive officers, including the union president for about 20 years, Emilia Dapulang from MDSP, and the multi-pronged flexibilization schemes resulted in cracks within the leadership of the union. A section of the leadership and the vast majority of members argued that the financial crisis should not be accepted as justification to coerce the union into agreeing to a downgraded terms of the CBA. They alleged that this was what the management exactly wanted, and this was what the union must resist rather than blindly accept.

Despite the internal disagreement, the union managed to successfully stop the compressed work week and inspired its members to scale up their actions, through grievance procedures, negotiations and creative means of protests involving sticker campaign and body placards inside the plant, as well as pamphlet about the workers' issues distributed in communities. During the negotiation, NXPSCIWU staged a 5-minute `snake rally' from NXP's gate 1 to gate 2, participated in by some 200 workers, to dramatize their demands. Though the participants were accosted by the guards, the protest served as the turning point for NXPSCIWU's new stage of militant unionism.

The internal strategies that the union adopted seemed a timely preparation for what lay ahead in the years to come. At the time, the management was also increasing the numbers of agency-hired workers; from one manpower agency

12 Interview, Alet Mariposque, 15 April 2015.

to getting two more labour suppliers to hire workers. By 2013, the number of both directly and agency-hired contract workers spiked from from 200 contract workers initially hired through Testech, the number increased to more than 2,000. Yet, the promotion of contract workers to regular/permanent employment status was slow and the size of union membership dismally grew to only 1,500 from about 1,348 workers.[13]On several occasions, the management refused to implement the previously agreed wage increases and other monetary benefits. It also attempted to outsource the warehouse and delivery services, as well as the manufacturing of one of its products, as if to test and measure the union's strength. NXPSCIWU's new found militancy frustrated these attempts at outsourcing, but was unable to stop the flexibilization.

Scaling Up the Consolidation: Political and Union Education, Community Organizing

The union got their demands in what they called as the biggest CBA gains in their history of collective negotiation. The disagreements between some of the union officers and the members were addressed, and the General Assembly voted to hold an election. Reden Alcantara was voted union president. Under Alcantara's leadership and with the full support of NAFLU-KMU, the union underwent a re-examination of its organization, strategy and objectives vis-à-vis the trade union movement in the country. Alcantara noted that in the 20 years that the union existed, it was able to improve, at least economically, the working conditions at NXP-Cabuyao, but it fell short of making a real impact on the trade union movement. Alcantara notes that the combined community support and the protest march outside the company's gates taught them valuable lessons: (1) the importance of community support in pushing for the workers' demands; (2) the need for political education to consolidate the membership and be able to take on the challenging task of organizing the community and other workers in the SEZs; and (3) the necessity of participating in broader organizations or alliances, like the Metal Workers Alliance of the Philippines (MWAP). 'NXP workers are directly affected by what is happening globally and nationally, and thus, the members have to understand the factors influencing the policies and practices within the company', Alcantara explains. This analysis was also echoed by Mariposque, a union officer who also got separated from work because of the MDSP. Mariposque subsequently decided to work as a full-time organizer for NAFLU-KMU.[14]

13 Interview, Reden Alcantara, 27 Feb. 2015.

14 Interview, Alet Mariposque, 15 April 2015.

Another element in this stage of union consolidation was the formation of various work or program committees, such as on occupational safety and health (OSH), women, education, finance, campaign, and membership, among others. The union mandated all its members to join a committee of their choice, in a bid to ensure broader and more active participation of the members in all union affairs, while at the same time raising their awareness and capacity to run the organization. After many years, problems concerning exposure to lead and other chemicals were tackled seriously. The OSH work committee, which led the OSH education and training of members as well as the monitoring of cases in partnership with other OSH NGOs, became an effective training ground for a new breed of union leaders.

Strategically, the union intensified its efforts to reach out to and organize workers in other factories within the LISP. The mass protests that were staged in the fight for the reinstatement of NXP 24 and the resumption of the CBA negotiations made the union a prominent formation within the economic zone; at the end of the four-month struggle, the union of Optodev Lenses workers that they started to organize joined the NAFLU-KMU, and inked a new CBA with their company in April 2015. Previous to this, NXPSCIWU-NAFLU-KMU also assisted in organizing the workers of Surface Mount Technology (SMT) in LISP II.

When asked about the other important gain that union achieved in that arduous struggle, NXPSCIWU notes that it was the significant number of workers from other factories who came forward and asked for their help in organizing their own unions. This wonderful realization that trade unions can exist and win their struggle inside the SEZs was indeed a huge departure from the situation in 1995, when unionism was a not only discouraged but also expressly prohibited inside LISP I.

Building International Linkages

Another important step that NXPSCIWU took in strengthening its organization was the building and strengthening of its alliances and international linkages. In 1996, it was elected chair of the Metalworkers Alliance of the Philippines, an affiliate of the global union federation, IndustriAll. Alcantara, then the union president, became more active in various events that MWAP organized at the national level, further solidifying the reputation of the union amongst workers in the industry. NXPSCIWU-NAFLU-KMU regularly participated in many other endeavours that Good Electronics, a loose campaign network on human rights and sustainability in electronics industry, organized in Asia and Europe. Alcantara also represented MWAP in IndustriAll meetings, conferences and exchanges, bringing the NXP workers'

experiences to the fore while gathering allies and friends in the international community in the process.

NXP24 and the Fight Against Union Busting and Attacks on Wages: Lesson Learnt

At the onset of the expiration of the NXPSCIWU's CBA in 2013, the political atmosphere inside NXP was different from usual. When the union handed its intent to open the negotiation along with a copy of its proposal, these were coldly received by the NXP management. Later, the company gave its wage increase counter-proposal that shocked the entire union membership: the proposed increases was too little that it almost amounted to nothing.

The new negotiation that began in December 2013 dragged on and despite some collective actions dramatizing the workers' dismay in the process, the company did not budge. The union patiently carried on with its usual activities, as it likewise focused on the political education of its membership.

On 4 May 4 2014, 24 union officers were called to a meeting, with no clear agenda laid down by the management. Thinking that the emergency meeting had something to do with the stalled CBA negotiation, the 24 officers complied and presented themselves (CTUHR, 2014).

The meeting, as it unfolded, was not about the CBA, but served as an opportunity for the management to dismiss the entire union leadership for leading illegal strikes on 9 April, 17-18 April, and 1 May. No further discussions were allowed, and the leaders were escorted out of the NXP's premises by the Special Action Forces, an elite group of members of the Philippine National Police (PNP), and by the company guards. They were told that they were barred from entering the NXP's premises from then on.

The sudden joblessness of the 24 NXPSCIWU executive committee members and the cutting down of the union's leadership shocked not only the entire union membership, but also the progressive and militant section of the labour movement. The allegations of illegal strike during the days mentioned were equally appalling. On 9 April and 1 May are legal non-working holidays; 17-18 April were Maundy Thursday and Good Friday – also non-working holidays that are zealously observed by Asia's foremost Catholic country. Except for churches, police stations, and hospitals, businesses and establishments were closed. Previous CBAs signed by the union and the company provide that the company shall support the observance of International Labour Day (May 1), by suspending full operation to allow their workers to participate in whatever action the union may choose. Thus, despite the initial shock, it was not difficult to see that NXP's move was nothing but brazen union-busting designed to derail and

downgrade the stalled CBA negotiations. The initial shock was shortly replaced by mounting rage and protests; minutes after the dismissal of the officers, who then became collectively known as NXP24, various groups of workers, union members and supporters condemned the company's move in social media.

Apparently, NXP Semiconductors Inc. Cabuyao had other things in mind. By dismissing the union officers *en masse* for not reporting to work during legal holidays, NXP employed what it think may be a cleverly calculated tactic that could have effectively ended the union and, along with it, the CBA negotiation. But the NXPSCIWU-NAFLU-KMU had prepared its membership quite well. Mindful of the Assumption of Jurisdiction Order[15] hanging over the heads of trade unions planning to stage a strike, NXPSCIWU took the more creative strategy of challenging the global giant. Inside the plant, union members stepped up their noise barrage in canteen during breaks. Later, when the management prohibited such activities, they were replaced by other modes of protests, including body and table placards. The management then again prohibited these as well, arguing that such reflect badly on the company's image. The workers complied, but instead filled social media with messages of protest and wrote their demands on improvised hand fans. There was no stopping the workers' creative militancy.

Outside the production plant, NXP24, with support from its members, co-workers, and allied organizations such as the KMU, picketed and forcibly opened the gate of LISP I in rage. Protesters were harassed; a few were injured when violence broke out between the protesters and policemen, company guards and LISP I security forces. For the first time in the history of the company, the industry and LISP I, the silence that dimly characterised the country's SEZs since the early 90s was broken (CTUHR, 2014).

Five of the union officers were later slapped by the police with physical injury charges. The case was subsequently dismissed as part of the settlement package.

15 The Assumption of Jurisdiction or Article 263 (g) of the Labour Code empowers the DOLE Secretary to assume jurisdiction, (AJ), that is, prohibit strikes or lockouts in industries that, in her/his opinion, are indispensable to the national interest. What constitutes indispensable to the national interest is so broadly defined and its interpretation is left to the opinion of the DOLE Secretary. Since its promulgation, AJ, as it is known to workers and unionists, remains a dreaded state and capital instrument hanging over the heads of trade unionists planning to stage or staging a strike. Defiance of the AJ order often results in the dismissal and forfeiture of benefits of unionists, and worse, criminal charges against them. Local trade unions thus deliberate ever so carefully before launching a strike or any collective action that may be construed as `harmful' to the company's production or to the national interests. Factories or enterprises inside SEZs, by nature of their locations, are all considered vital to the national interests.

The protests did not end with the opening of the heavily guarded gate and with getting inside the SEZ several times. KMU took the cause of NXP24 as a national fight and on 5 June 2015, it called for a Global Day of Action to gather support for its call, 'Bring back the NXP24, resume CBA negotiation now!' Other workers and allied unions and organizations at the national and international level joined the call.

Various militant national organizations and movements; associations of women, urban poor, youth and students; sections of the Church; and various NGOs also extended support to the beleaguered NXP workers, by joining the protests at the LISP compound, flooding social media with messages of protests against NXP, DOLE and PEZA which did not lift a finger to call out and sanction the company for what was obviously an act of union busting.

The series of mass actions inside LISP I awakened the interests of workers in neighbouring factories about unionism, and seriously put an end to their negative perception of unions and mass actions inside SEZs. After three months of stand-off, and with the company's image sustaining serious blows from bad publicity, NXP's global management sent in a broker to negotiate with the union, to stop the protest actions and resume the CBA negotiation without the NXP24. Consequently, it refused to reinstate the 24 officers and even insinuated for the union to elect a new set of officers or negotiating panel. The suggestions prompted more protests, and more Filipino workers embraced as their own, the struggle of the NXPSCIWU.

On September 2014, four months after the dismissal of the union's leaders, NXP reinstated 12 of the 24 union officers and approved a new CBA, giving the workers a 4.5per cent wage increase. Although the top 12 union executive officers were unable to return to work, they noted that the signing of the CBA, the inspiration of the action inside the zone, and failure to bust the union were a victory worthy of sacrifice. Although they maintained that dismissal was unjust, they accepted the reasonable severance pay to pave way for the signing of CBA for the remaining thousands of workers inside the company. The union, the NXP workers, and their local and international supporters rejoiced in what they unanimously describe as a landmark victory of the struggle of electronics and semiconductors workers in in SEZ in recent history.

Lesson Learnt

Various protagonists in the struggle of the NXP workers' union offered valuable insights that were instrumental to its victorious fight. The officers of NXPSCIWU, and its main federation NAFLU and KMU underscore the importance of the mass movement in pushing for, sustaining and ultimately winning the battle

of the NXP24. They argue that, were it not for the mass support of various sectors and movements in the country along with international pressure, NXP workers would not have been successful in fighting off and winning over the many attempts of the company, and the state itself, to undermine their collective power that could result to: busting of the 33-year-old union,; diminution of wages and benefits of the remaining workers; legalise an attempt to construe an action during legally mandated holidays as tantamount to holding an illegal strike; and most importantly, out rightly prohibit independent unions inside SEZs. They victory of NXP24 and their supporters is thus not simply a victory for NXP workers alone, but also for the rest of the Filipino labourers struggling against state/capitalist oppression.[16]

Another key lesson from the experience, according to KMU public information officer Renato Asa, is the role played by social media. Asa noted that it was the most successful social media campaign that KMU has ever launched; he cautions, however, that this was made possible only because the NXP workers' have access to smart phones and they possess social media skills, which may not be present in other workplaces.[17]

Another factor that the union considers to be crucial to their success was the solidarity they have formed with different organizations at the international level, built throughout the years by its allied local organizations such as MWAP and KMU. All these groups mobilized their own networks and their networks' networks to push for the demands of the NXP workers' union, such as the reinstatement of the NXP24 and the resumption of the CBA negotiation.

NXPSCIWU alone cannot win this struggle against the NXP giant, but the potent combination of the workers' actions inside the company and sustained people's movement outside made this victory possible, says the current union president Emily Barrey. The struggle, however, is far from over; the union believes it is not far-fetched for the NXP management to strike again, so that as early as now, it is taking on the task of consolidating its membership organizationally and politically, of contributing to organizing more workers inside the SEZs.[18]

When asked about the important lessons that they learned in their involvement with the union, Mariposque and Alcantara, both among those who were displaced by the management's flexibilization and union-busting schemes, say it is paramount for any genuine union not to limit itself on CBAs and CBA economics; inspiring members' participation in the CBA negotiations should be

16 Interview, A Pascual and S Carranza, 15 April 2015.

17 Interview, Renato Asa, 18 March2015.

18 Interview, Emily Barrey, 4 May 2015.

the ultimate goal. There is more to unionism than just the CBA; the union's task should always be to organize workers to contribute to the strengthening of the movement, not only within their own workplaces, but wherever the rights and interests of any worker are in danger of being trampled upon.

Postscript

On 2 March 2015, NXP announced its decision to merge with Freescale Semiconductor, Ltd., with a transaction value of US$ 40 billion. The merger's combined revenue amounts to more than $10 billion. (NXP Press Release, 2015). In a memo written by Freescale CEO Greg Lowe to its employees, he mentioned that except for the RF power business, which the NXP management is planning to sell, there will be no product redundancies (Austin, 2015).

NXP Cabuyao workers, especially the members of NXPSCIWU, are worried, as the products they are manufacturing may be rendered irrelevant or redundant in light of such an announcement. This may result to redundancy or eventual loss of about 700 current jobs at NXP Cabuyao, which could also mean loss of employment and union membership. This early, NXPSCIWU is bracing itself again for what lies ahead, for it knows the next struggle will be tougher and broader.

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CHAPTER TEN

Worker Resistance and Worker Organizing in the Philippine Business Process Outsourcing Industry

by JANE ALEXANDRA SIWA & DAISY S. ARAGO

Introduction

The business process outsourcing (BPO) industry in the Philippines has been touted as a growth driver in Philippine economy (Saclag, 2015). Since its entry into the the Philippine economy in the late 1980s, the BPO industry has achieved continuous growth. Industry revenues in 2014, for instance, hit an estimated 18 billion US$, over twelve times the industry's revenue of US$ 1.4 billion in 2004. Industry groups like the Information Technology-Business Process Association of the Philippines (IT-BPAP) and industry analysts project that the Philippines' share in the global BPO industry will reach as much US$ 20-25 billion by 2016. A World Bank economist foresees that the BPO industry in the Philippines is likely to reach US$ 30-55 billion revenues by 2020, depending on the level of growth rates (Mitra, 2011).

Underneath this so-called 'boom' in the BPO industry is a race to the bottom for BPO workers who have to bear with diminishing wages and benefits, various forms of precarity and occupational health hazards. The industry has also long prided itself of being 'union-free', despite many attempts by trade unions from different orientations to organize BPO workers. Both government and capitalists present the absence of unions in the industry as a result of effective and positive industry self-regulation. On the other hand, this can also be seen a product of the suppressive schemes of companies to curtail workers' right to freely join or form unions, thus undermining their right to collectively bargain.

The collective resistance of BPO workers against conditions of institutionalized oppression and intensified exploitation has been existent for

quite some time despite the absence of formal unions in BPO firms. BPO workers under the banner of BPO Industry Employees' Network (BIEN), for example, have waged and advanced various campaigns and struggles – from petitions for local claims addressed to individual companies, to much broader demands for pro-worker industry standards.

This chapter looks into the different forms of resistance and struggles waged by BPO workers. It particularly takes a closer look at the experiences and struggles of BIEN, an organization of BPO employees that started from discussions among friends and has developed into an organization of BPO workers. The chapter thus seeks to draw valuable lessons and inspiration from the organizations' experiences towards the development of conscious working-class subjects in the BPO industry.

The first three parts of this chapter are devoted to outlining the brief history and general description of the BPO industry in the Philippines, and the working conditions and labour issues in BPO firms. A review of related studies and documented realities on organizing BPO workers and the general trade union climate follows. This lays down the context of the growth of the sector that partly explains the challenges and obstacles in organizing unions in the industry. Different approaches employed by trade unions in organizing BPO workers are also outlined, followed by the various forms and levels of resistance and struggles of BPO workers, and the formation of BIEN and its efforts towards building working-class unions within the BPO industry.

Data and information used are from both primary and secondary sources. The primary sources of information are key informant interviews; focus group discussions and actual participation in local protest actions; an international mission held in March 2015, and the assembly of the first ever registered union in the BPO industry. Secondary data are from previous academic and activist researches, government statistics, policy pronouncements, reviews and forecasts, and relevant news reports.

Business Process Outsourcing in the Philippines

Business Process Outsourcing (BPO) refers to the 'delegation of service-type business processes to a third-party service provider'. BPO is part of the service sector of the economy and specifically covers services related to information technology, business administration, sales, marketing, and customer care. In the Philippines, BPO services are generally classified into seven sub-sectors: (1) contact centre; (2) back office; (3) data transcription; (4) animation; (5) software development; (6) engineering development; and (7) digital content (Riguer et al., 2011).

The birth of the BPO ICT industry in the Philippines dates back to early 1980s, with data encoding and animation services outsourced to Filipino workforce (Lee et. al., 2014). In the mid-1980s, Andersen Consulting (now Accenture) put up a systems and application development software which later expanded to centres of technology and operations delivery; in 1992, it opened the first contact centre in the Philippines. More investments in the BPO sector came alongside the further liberalization of the economy and the telecommunications industry. The Special Economic Zone Act of 1995 (Republic Act or RA 7916 as amended by RA 8748) was signed into law, providing further fiscal incentives to foreign investors. Multinational companies such as Sykes Asia then entered the Philippines in 1997, followed by eTelecare in 1999. Other BPO subsectors, such as medical transcription, began operating in the Philippines in late 1990s (Lee et.al, 2014).

The BPO industry registered rapid growth from 2000 to 2005. From a mere 0.075 per cent share in the country's GDP in 2000, the industry grew by 50.8 per cent annually to reach a 2.4-per cent share in GDP in 2005. From 2005 to 2009, its annual revenue growth averaged at 44.2 per cent. And while its annual average growth rate went down to 17.2 per cent from 2010 to 2014, (BSP, 2013), it nevertheless remains as the fastest growing sector in Philippine economy. By the end of 2012, the BPO industry's share in the GDP already stood at 5.6 per cent, second only to OFW remittances. Industry experts project that growth rates for the industry will increase by 17 to 18 per cent per annum compared with only 6 per cent for OFW remittances, suggesting that the BPO industry might overtake OFW remittances in terms of revenues by 2017 (Espina, 2015). The global share of the Philippine BPO industry also doubled from 5 per cent in 2006 to 10.4 per cent in 2012. The IT-BPAP estimates that with a modest growth of 12 to 15 per cent annually, Philippine BPO industry can reach 20 per cent share of the global outsourcing industry by 2020. (Magkilat, 2015a).

The Aquino administration, in its Philippine Development Plan for 2011-2016, identified the BPO industry as among the priority industries for investment. To lure more investments, the government continually provides 'comprehensive set of incentives to investors comparable to other countries.' These incentives cover duty and tax exemptions on capital investments and operating costs, tax holidays for new investors, and subsidies for the development of future human resource (See Table 1). From 2004-2012, a total of PHP 791.93 billion worth of government-provided incentives was given to the BPO industry (Isip, 2015). In 2012, Technology Education and Skills Development Authority (TESDA), a government agency that provides technical-vocational education, received PHP 500 million in government funding to provide BPO training, further boosting

Table 1. Comparative incentives for BPO companies in select Asian countries

AREA		PHILIPPINES	INDIA	CHINA	EGYPT	MALAYSIA
Capital	Investment related	Import duty waiver for capital equipment VAT, customs duty waiver	Concessional 3.09% customs duty on the import of capital goods	Varies		Capital expenditure subsidies of up to 100% Import duty waiver - multimedia equipment
Operations	Talent and development	Training grants for finishing schools (TESDA vouchers)		Training charges tax exempt up to 8% of payroll	Training subsidy	Training subsidy 20%-40%
	Other input costs-linked	Exemptions on local taxes and permits VAT exempt inputs	Services, sales tax exemption; 50% exemption on stamp duty		Telecom discount Rental discount	Subsidy on telecom, rentals and utilities
Taxation	Tax-linked	6-year tax holiday, extendable to a maximum of 8 years (or) 4 years' tax holiday extendable to a maximum of 6 years Post-tax holiday, payment at 5% rate on gross income	5-year income-tax holiday only in SEZs; 50% exemption for 2 successive 5-year blocks subject to reinvestment 100% depreciation on capital goods for 5 years	Preferential corporate tax: 15% Business tax exemption	Personal tax rate cuts Corporate tax rate cuts	10-year corporate tax holiday Accelerated depreciation

Source: DOST-BPAP (2012). *Philippines IT-BPO Investors' Primer*

the BPO labour market. State colleges and universities and private educational institutions are also implementing reforms, through adapted and modified tertiary education curricula tailored to the needs of the BPO industry for additional and more 'capable' workforce.

In 2015, eight Philippine cities were ranked as among the top 100 outsourcing destinations in the world, with Metro Manila and Metro Cebu in rank 2 and 9 respectively (Tholons, 2014). The government, together with industry players, has identified 12 more cities outside Metro Manila as 'Next Wave Cities', where BPO companies have already started operations or are aiming to develop BPO-IT hubs. Among these 'next-wave cities' are Baguio, Davao, Dumaguete, Iloilo, and Lipa, as well as those in Metro Bulacan (Baliuag, Calumpit, Malolos, Marilao, Marilao, and Meycauayan), Metro Cavite (Bacoor, Dasmarinas, and Imus), Metro Laguna (Calamba, Los Banos and Sta. Rosa), Metro Naga (Naga and Pili) and Metro Rizal (Antipolo, Cainta, and Taytay).

Employment in BPO companies also expanded tenfold from 101,000 in 2004 to 1.03 million by the end of 2014. Industry leaders project that direct employment in the BPO-ICT industry will reach 1.3 million by 2016, and another 3.2 million in indirect employment opportunities (Mitra, 2013). Industry players claim that direct and indirect employment generated by the industry have contributed PHP 1.71 trillion to government revenues from withholding taxes and value-added taxes from 2004 to 2012 (Isip, 2015).

Exploiting Cheap, Young, and Unorganized Skilled Workforce

While the BPO industry offered relatively higher wages compared to other wage employment for Filipino young professionals especially in the first few years of its entry in the Philippines, BPO employees in both rank–and-file and managerial positions are paid much lower than their counterparts in the countries of offshoring/outsourcing companies, and even in other BPO destinations like India and Malaysia (IBON, 2009). The condition even worsened when the industry started to boom in mid-2000s. The boom did not lead to higher wage and benefit packages, and better working conditions for the expanding workforce in the growing industry. A government survey in 2011 showed that 45.9 per cent of IT-BPO companies use the minimum wage rates set by the Department of Labour and Employment (DOLE), while around 54 per cent use an internal pay scale a bit higher than the government-prescribed minimum wage. BPO companies take advantage of the poverty minimum wage rates which also vary across regions. In Metro Manila, the highest minimum wage rate of PHP 481 or US$ 10.23 (as of 2015) while in Region VII where Metro Cebu is located, minimum wage is even

lower at PHP 353 or US$ 7.51. Meanwhile, family living wage estimated at PHP 1,086 a day.

A survey conducted by the Ecumenical Institute for Labor Education and Research, Inc. (EILER) in 2008 also revealed that nearly half (45 per cent) of the workers in the BPO industry receive just about the average national wage between PHP 10,000 to PHP 15,000 (US$ 212.76 –PHP 319.14) per month; another 36 per cent receive wages between PHP 15,000 to PHP 20,000 (US$ 425.53); and only 19 per cent receive wages between 20,000 to 40,000 (US$ 851 a month. Instead of improving, wage rates and benefits have decreased. In 'next-wave cities', salaries of BPO employees have been much lower because of current policies of wage rationalization or lower(ed) wage levels depending on region and industry. In Baguio, a city farther North of Manila, entry-level agents would receive basic wage rates as low as PHP 10,000 or US$ 200.64 a month. In cities in the south, wage rates in BPO companies are reportedly lower PHP 6,000 or US$ 120.39 in Bicol (2008) and PHP 8,000 or US$ 160.51 in Cagayan de Oro (2016).

Mergers and acquisitions, which have been a strategy by BPO companies to 'consolidate and increase competitiveness', often result in lower salaries offered to entry-level employees, diminution of benefits (e.g. health insurance) or incentives of the existing workforce, or even massive lay-offs. Employment in BPO companies is highly insecure as they operate based on contractual agreements with principal clients (commonly referred to as 'accounts'). DOLE describes in its Department Order No. 01-12 the distinct nature of BPO as a bilateral vendor-vendee relationship involving an entire business process, different from contracting or sub-contracting arrangements or trilateral relationship.

BPO companies are thus constantly competing with each other as principal clients seek the best deal (low cost but with high efficiency and competency) from a set of service-providers. At the end of the chain are BPO workers whose tenure is dependent on contracts between BPOs and their clients. It is not uncommon for clients to pull out or terminate their accounts from BPO companies, leaving workers in a 'floating' status until a new account is opened; there are even instances where an entire workforce belonging to one dissolved account was retrenched. In most companies, agents who are rendered 'floating' receive no pay even as they continue to be part of the BPO's workforce, albeit reserved. BPO workers would then need to undergo the same hiring process and pass the training programme so they can be transferred to the new account. More often than not, BPO workers are forced to transfer to another company after only a few months.

Philippine laws provide that workers who have worked for six months and one day in an enterprise should be considered regular employees, and are thereby

protected by the same against unjust and undue termination. But 'regular' or 'tenured' workers in BPO companies perennially face the threat of dismissal because of strict performance targets. They are subject to regular evaluation and required to meet very high performance matrix scores, as explained by a BIEN member:

> 'We have to maintain our scoreboard; otherwise, we will undergo a probation program. There are various matrices. One of these is the average handling time (AHT). Depending on the account, AVH should not exceed 5 minutes. But for those engaged in troubleshooting their AVH can be between 13 to 15 minutes. Two is adherence or following the schedule. This means that you should not go beyond the time allotted for break time, bio-breaks (using of toilets) and attendance. Once you fail the scorecards, you will undergo PEP (performance evaluation program), which means that you should achieve certain points in your scorecards consistently for three to four weeks, for three months. If, for instance, you achieved the scores required in your first month under PEP and then failed again, the following week, you re- start another three months of PEP.'[1]

Tight competition between BPO firms means constant dismissal of 'unproductive' workers. To keep up with the highly competitive industry, BPOs apparently implement 'systematic attrition' of its workforce.[2] This is similar to the *bell curve* business model, where employees are regularly ranked based on performance, oftentimes on a 20-70-10 ratio, i.e. excellent, adequate, and non-productive, respectively. This situation intensifies employment insecurity and competition between and among employees, as the lower 10 per cent face a constant threat of dismissal even if these employees may be in certain instances 'regular' employees. The virtual absence of employment tenure is also reflected in high worker turnover rate (attrition rate) in the industry which went up as high as 50 per cent but has eased to 20 per cent by 2014 (Magkilat, 2015b).

Adding to the insecurity of BPO workers' employment status is the 'dual employer' relationship that exists in BPO firms. Employees are not only liable to the rules, regulations, and standards of the BPO firm that hired them, but are also answerable to the policies of the BPO client. This means that a BPO worker employed, for example of Company A and deployed to work under the account of Client X is subject to the rules of both Company A and Client X. Some BPO employees have observed that in most cases, the standards and rules set by the

1 Focus Group Discussion, BIEN members, 27 February 2015.

2 Interview, Emadee Joy Pangaliman, 5 March 2015.

client are the ones invoked and applied even if they are far stricter than the rules set by the BPO firm that hired them, or even if such client's standards contradict Philippines laws, customs, and tradition. For instance, official holidays observed are those in countries where the client companies are based, and not Philippine holidays. In fact, Philippine holidays are considered 'critical working days' in some BPOs wherein stricter sanctions on employee attendance are employed in order to ensure that workers go to work, and thus continue to provide service to their clients, even when it is a national holiday in the Philippines. In cases where workers are found to have violated certain rules of the client, BPO firms hardly protect their employees from sanctions imposed by the clients. A member of BIEN expounded on this in a focus group discussion:

> 'In some instances, when an employee fails to meet the standards of the client, she is immediately fired even if she is a 'regular' employee by the Philippine-based BPO company. Often, the client company sets the standards and rules, and decides on the fate of an employee. In that sense, job insecurity is doubled because BPO employees are confused about who their real employer is, the BPO company or the account'.[3]

BPO employees in the Philippines work at night to service clients or their customers who often live in an opposite time zone. Such exposes them to more health risks. Previous studies pointed out that people, especially women, who regularly stay awake at night become more susceptible to certain kind of carcinogen (IOHSAD, 2010). BPO workers also complain of poor ergonomics and stressful working environment that equally pose serious risks to their health. In the 2011 survey of the Bureau of Labour and Employment Statistics (BLES), for instance, a total of 11,638 cases of occupational diseases were recorded in the BPO industry. Commonly, workers suffered from back pains, accounting for 34.3 per cent of the total cases. The same survey notes that one of every five workers in BPO industry also had essential hypertension (21.8 per cent) and peptic ulcer (19.4 per cent).

Challenges to Workers Organizing in BPO in the Philippines

Despite the myriad yet hidden labour issues besetting Philippine BPO industry, it continues to be hailed by the government and industry players as 'union-free' since it was first introduced in the country over two decades ago. This was only recently shattered after workers at West Contact Services, later acquired

3 Focus Group Discussion, BIEN members, 27 February 2015.

by Alorica, successfully registered a union. However, the United Employees of Alorica (UEA) has yet to be recognized as the sole and exclusive bargaining agent within the company. The absence of unions and the possibility of organizing workers in the BPO industry have been the subject of inquiry by academics, with the contending sides explained by both industry players and labour rights advocates. IT-BPAP attributes the absence of unions in the industry to what they described as relatively higher salaries, better benefits, and the relative security of employment in a BPO company when a worker resigns or is dismissed from a BPO firm. Companies, IT-BPAP claims, provide for and properly address the needs of employees, so that workers need not form unions (Laso, 2013).

A 2008 survey conducted by academic Jonathan Sale and human resource practitioner Arlene Bool offers a differing opinion. The survey shows that BPO workers are predisposed to join or form labour unions given the following conditions: (1) they have lower monthly incomes; (2) the purpose of their communication mechanism at work is to merely inform rather than consult. There is minimal if any, employee participation in policy and decision-making; (3) employees are more knowledgeable about company rules and regulations that affect their employment; (4) they are younger and; (5) they have more knowledge about trade unions (Bool and Sale, 2007).

Niklas Reese and Joefel Soco-Carreon (2013) also identify 'alternative reasons' to 'worker despair' as to why, despite the prevailing insecurity and other exploitative conditions in Philippine call centres, 'collective action is not arising among call centre agents' (p. 142). Based on their discussions with 40 call centre agents, the two authors outline 10 possible explanations on why union building has been futile in the call centre industry in the Philippines. According to them, external circumstances and internal 'framing', or the perception or construction of the workers of their situation, may be the reasons for the absence of unions in the BPO industry. The study also points to external circumstances – like the no-union policy of the companies, the transience of call-centre work, ambiguous employee-employer relationship, a working grievance procedure and the practice of call-centre-hopping among agents – that dissuade workers from forming unions. The absence of unions in call centres may likewise be explained, according to two authors by so-called internal *framing,* or how workers perceive themselves and their situation. They point to high individualism; the perception that labour rights violations are normal; non-identification with unions as they do not see themselves as 'workers' but as employees'; the negative perception of unions; and the defeatist attitude towards collective resistance as among the internal factors the keep individual workers from forming or joining unions.

Labour activists, unionists and BPO workers who themselves are engaged in organizing may identify with or totally reject some of these 'alternatives reasons' posed by Reese and Soco-Carreon. However, certain factors pose greater challenges to organizing unions or launching collective action among BPO workers. On top of these is the history of union repression and the persistent climate of hostility against free and independent unionism perpetuated by state policies, laws and practices, as well as corporate/industry policies that discourage or outrightly prohibit union organizing.

Generally, trade union suppression in the Philippines has been rampant and manifest, as evidenced by the thousands of trade union and human rights violations documented in the last 10 years; this, in part, has contributed to the steady decline of unionization rate in the last decade from 26.5 per cent in 2000 to a low 8.5 per cent in 2014 (BLES). Over 100 trade unionists have been killed in the last decade and scores have been forcibly disappeared. Thousands face constant harassment and threats, and trumped-up charges in the process of organizing unions and in their practice of union rights or collective bargaining. Strikes and collective actions are violently dismantled, resulting in injury and death of workers. All of these conditions form a very hostile climate for union organizing in the country and adds to the difficulty in organizing workers in a relatively young industry like the BPO.

It is common knowledge that BPO companies prohibit workers from joining or forming unions either during employment orientation or in writing (e.g. employment contracts that categorically state that joining associations or unions may lead to the termination of work). Behind this prevalent no-union policy in BPO companies is industry self-regulation being promoted by both industry players and the government to invite more investment and ensure the BPO industry's continued growth (VCGP, 2010). As a self-regulating industry, the BPO sector has its own mechanisms and means in addressing employee concerns and situations, based on the industry's voluntary codes of good conduct or VCGP. However, the BPO-ICT VCGP makes little mention of how worker representation can be strengthened, or how independent unionism can be encouraged in the industry. Instead, the VCGP believes that labour-management disputes are best settled through institutionalized dispute settlement mechanisms, the use of employee volunteer groups or special interest groups for 'early detection of issues', as well as 'regular FGD/coffee/chat session or [the creation of] labour management councils or [their] equivalent at the production/operations level and industry level through the IT-BPO ITC' (VCGP in BPO-ICT n.d. p. 6).

The policy of self-regulation and the VCGP have been carefully crafted, so that they present trade unions as unnecessary, irrelevant and even counter-

productive to the industry. As in VCGPs, companies cannot outrightly state that unions are not allowed in the industry, as this contravenes the Constitution, the ILO conventions and national laws. In reality, BPO employees and members of BIEN attest that self-regulation has been invoked by companies in many instances to dissuade workers from joining or forming unions and from pushing for better working standards in the industry. BIEN National President, Ian Porquia, further explains:

> 'The companies always insist on industry self-regulation. For example, they refuse to implement specific guidelines like DOLE Circular Number 01-08, insisting that BPO is self-regulating industry and that it is the industry that will create guidelines that will govern the BPO industry. They argue against the set of BPO labour standards we are lobbying Congress to pass, again because BPO is a self-regulating industry. And when we talk about BPO workers' right to form organizations and unions, they always invoke industry self-regulation. They'd say there is no need for unions because of BPO is a self-regulating industry. If there are disputes, it can be settled between the individual and the management.'[4]

It is not only the companies that discourage BPO workers from forming organizations, but the government as well. BIEN's Secretary General, Emadee Joy Pangaliman, lamented that as a group, they cannot feel the government's support for BPO workers to freely organize. When she followed up on BIEN's official registration before the DOLE on May 2013, the personnel who handed them their certificate of registration told her, *'Alam nyo namang bawal ito, 'di ba?'* ('You know that this [forming an organization in the BPO] is prohibited, don't you?') Shocked and in disbelief, she only returned the question to the labour department staff, *'Pero alam nyo rin pong hindi ito bawa,l' di ba?'* ('But you also know well that this is not prohibited, don't you?'). This condition is further aggravated by the fact that some BPO companies and IT-hubs have been registered as economic zones at the Philippine Economic Zone Authority (PEZA); economic zones are notoriously known for enforcing a 'no-union, no-strike' (NUNS) policy

Attempts at Organizing BPO Workers

Traditional trade union centres have approached organizing BPO workers in different ways. Some have started organizing workers into workers' organizations instead of organizing outright unions. The two factions of the Trade Union Congress of the Philippines (TUCP), for instance, have set up the BPO Workers

4 Interview, Ian Porquia, 7 March, 2015.

Association of the Philippines (BWAP) and the BPO Workers Organization (BWO) mainly to provide services to workers such as legal assistance, insurance, and livelihood. Both BWAP and BWO claim to have thousands of members across the country. Interestingly, though, most of officers of the BWAP and the BWO are human resource personnel of BPO companies.

Similarly, Partido ng Manggagawa (PM or Workers' Party) formed the Inter-Call Center Association of Workers or ICCAW after they assisted displaced workers in runaway BPO firms in Cebu City (ICCAW, 2015). According to ICCAW organizers, the association has over 700 members in Cebu coming from different BPO companies. They also participate in the industry tripartite mechanism through which they were able to negotiate worker representation in the grievance procedure of Convergys, one of the leading multinational BPO companies in the Philippines. Both the TUCP and the Federation of Free Workers (FFW) has also put up training centres for future BPO workers. According to Julius Cainglet of FFW, they were hoping that graduates of their training centre will later form unions in the call centers; the strategy however, did not lead to any material result because of high turnover and the difficulty of sustaining contacts with graduates.

From Cups of Coffee to a National Network of BPO Workers

In a 2013 International Workshop on Freedom of Association, Paul Galutera, a member of BIEN narrates the group's history:

> 'BIEN started over cups of coffee among friends who work in some of the biggest call centre companies in Metro Manila. BIEN started in 2011, and since then, it has worked for its expansion and launched drives and activities that could bring [attention to the] concerns, and work-related issues of the BPO employees' (CTUHR, 2013).

This is how BIEN members would recall and narrate the humble beginnings of what has become a national network of BPO workers with over 1,500 members. Its orientation paper describes BIEN as a network that was 'formed organically from after-shift and online discussions between call centre agents…' that expanded through organizing 'contacts of contacts' (BIEN, 2015).

The first coffee sessions in 2009 were initiated by the youth party-list, Kabataan. These sessions aimed to discuss among BPO employees their conditions at work and how to address them. Being a membership political party of the youth sector that at the time held a seat in the lower house of Congress, Kabataan pooled together some of its members who were already working in

BPO companies. From the two successive discussions over coffee, some of the participants became the nuclei of BIEN. A few of them persevered in organizing subsequent coffee sessions and used the internet to discuss issues at work and raise awareness of these issues among BPO workers.

EILER executive director Anna Leah Escresa recalls that back in 2010, some of BIEN's founding members, whom she met in the previous coffee sessions with Kabataan, helped EILER organize three other sessions with BPO employees:

> 'At that time, they (BIEN) were not yet a formal organization, but more like a core group. Incidentally, we have already done a research on the conditions of BPO and call centre agents back in 2008, and there was a growing need to reach out to more workers in the industry especially since our survey showed that working conditions is not as good as it is commonly perceived –wages are going down, there is hardly job security, unions are not allowed, there are health issues as well… We held a series of discussions and workshops with BPO workers, it was this 'core group' [of BIEN] that helped us go around BPO companies and invite other participants to join. That was from 2010 to 2011. We also held workshops and occupational health and safety mapping. In August 2012, we held a forum where the output of the cafe series was discussed vis-à-vis a minimum standards guide for the BPO industry that we presented.'[5]

The core group reached out to more BPO employees using social media platforms, as these employees sought advice on work-related complaints. On 29 November 2011, 13 individuals who actively participated in the series of discussions and were managing online support groups met in Manila and held their first official meeting. That was when they formally named their group BIEN.

As an industry-level network, BIEN seeks to unite BPO employees by 'reaching out to the widest possible range of existing organizations, associations and groups' within the BPO industry. The group recognizes the distinctly broad and unifying character of BIEN as 'important' to its 'purpose of advancing BPO employees' rights and welfare,' and 'necessary' given the 'high rate at which employees enter and exit the BPO industry' (BIEN, 2015a). Pangaliman explains this further:

> 'Our goal is to unite our ranks in the BPO industry.… Of course, when we think in terms of [organizing workers in a] company, that would [mean] to organize unions. But the reason behind organizing an 'industry-wide network' is due to

5 Interview, Anna Leah Escresa, 28 February 2015.

> the insecurity of jobs in the industry. BPO employees tend to transfer from one company to another as reflected by the high attrition rate. So [with an industry network] even if our members transfer from one company to another, [they] will still be part of the group.'[6]

Distinctively, BIEN has also strived to cater and be relevant to the interests of the educated youth that compose the majority of the BPO employees. It is remarkable that BIEN reaches out to BPO workers through 'fun-filled activities' by inviting hobbyist groups (hiking, mountain climbing etc.) of BPO workers to join the network, as well as by launching advocacy drives to organize and mobilize more BPO employees.

Forming Solid Organizations at the Grassroots

Despite the seemingly sweeping and broad character of BIEN, its expansion into a national network is anchored on their principles of upholding workers' rights and welfare, and reclaiming collective power by building unity on these principles with its members and forming solid chapters in different IT hubs. Employee grievances are not simply issues that need to be addressed at a firm level. Rather, these local issues are taken seriously by BIEN's leadership as opportunities to raise awareness of the workers' rights and of the need for an organization:

> 'There are workers who approached us online and asked us what to do with certain cases. At the same time that we try to assist them, we always think we can do more than just helping them with [their individual issues]. So what we do is organize discussions on workers' rights and our [studies] on the situation of BPO employees. It is a step towards organizing a chapter of BIEN in a certain company or IT hub.'[7]

BPO workers are commonly exposed to certain work conditions and to the ways of human resource management that tend to instil individualistic values. Incentives are given on a highly competitive basis determined by individual score cards. Even if workers are grouped together into teams, the team serves for the management's purpose only and to bring high scores for the team leader. Ultimately, workers constantly compete with other teams and with one another for incentives and good performance rating.[8]

6 Interview, Emadee Joy Pangaliman, 5 March 2015.
7 Interview, Emadee Joy Pangaliman, 5 March 2015.
8 Interview, a BIEN member.

But BPO workers are not all completely accepting of the intensifying attacks on their rights. Many acts of resistance among BPO workers on an individual basis are observed by both scholars and BIEN members. Even the common practice of BPO workers to transfer from one company to another is at times taken as a form of individual resentment over unbearable conditions in specific companies.[9] Companies' human resource departments deal with workers' complaints individually, but more aggressive and politically-advanced workers opt to deal with labour rights violations by filing individual complaints (e.g. illegal dismissal) before the labour court. BIEN challenges this prevailing individualistic approach to dealing with unfavourable conditions at work through organizing. It emphasizes the need for BPO employees to reclaim their right to freedom of association and muster collective strength by helping forge unity among BPO employees, build solid chapters and eventually form unions that can effectively bargain with employers (BIEN, 2015).

Initially a loose network of BPO workers attending discussions and seminars and providing support through online platforms, BIEN was able to consolidate and further expand its membership by building 'organizing committees' in certain IT hubs where BIEN members are concentrated. True to its identity as a 'network', the group expanded by recruiting 'contacts of contacts'. They regularly hold educational discussions, meetings and activities until a chapter consisting of at least 12 members is formed in a locality.[10]

By 2012, BIEN already has two organizing committees in Quezon City and cluster of IT hubs in Makati, Ortigas, and Bonifacio Global City (BGC).In July 2013, BIEN held its first general assembly in Ayala, Makati City, the financial district of Metro Manila, and formally elected its set of officers.. Given the wide distribution of its membership, BIEN decided to form separate chapters in three IT hubs in Metro Manila: Makati, Quezon City, and Ortigas in Pasig City. In a span of two years, the two organizing committees of BIEN gave birth to five more chapters in Metro Manila and four in cities/areas outside the capital region: Baguio City, Cebu City, Clark and Iloilo City. The campaigns and advocacies launched and advanced by BIEN proved to be instrumental to the group's rapid expansion.

Campaigning for Workers' Rights

BIEN became known among workers in the BPO industry through the various campaigns it launched on issues concerning the welfare and special interests of workers. The most prominent campaigns it organized as early as

9 Interview, Emadee Joy Pangaliman, 5 March 2015.

10 Interview, Emadee Joy Pangaliman, 5 March 2015.

in 2012 were creatively called 'Let it flow' and 'Let there be light.' 'Let it flow' is a campaign demanding more frequent and longer restroom breaks for BPO workers. Companies commonly restrict BPO workers' restroom breaks to only 10 minutes for every 8-hour shift. Going beyond the allowed break (also referred to as *over-break*) is considered a serious offense that can at times immediately lead to termination. This has been a pressing concern for BPO employees, as a growing number of cases of urinary tract infection and kidney stones have been reported among BPO employees from different companies. 'Let there be light', on the other hand, demands that street lamps be installed along roads leading to their workplaces, to help discourage crimes against BPO employees who work the graveyard shift.

BIEN popularized these two campaigns using social media and publicity materials circulated among their contacts and members. Porquia revealed that it was through these two campaigns that he himself became more active in BIEN. He was among those who led the signature campaign in various BPO companies for a more relaxed policy on restroom breaks and workers' safety on their way to and from work. Porquia explained that these campaigns caught the interest of many BPO workers as apart from their catchy labels, they also sought to address a common workplace issue.

These two specific campaigns later became part of BIEN's larger campaign to legislate a BPO industry labour standard (Philippine Online Chronicle, hereon POC, 2013). In September 2013, BIEN started campaigning for support for the pertinent bills in Congress: House Bill 1180 or the BPO Workers' Welfare and Protection Act filed by Kabataan Party-list, and Senate Bill 57 or Magna Carta for Call Center Workers Act filed by Senator Miriam Santiago. Salient provisions of these bills include better working conditions and the enforcement of BPO workers' right to form organizations and unions. According to Porquia, fighting for an industry labour standard also means fighting against the policy of self-regulation that is being promoted aggressively by big industry players, like the IBPAP, and the DOLE itself. However, BIEN admits that calling for an industry labour standard poses an even greater challenge:

> 'Unlike other bills in Congress – for example, the reproductive health bill, [on] an issue that cuts across sectors and has easily become a national issue – our demand for a BPO industry labour standard has not reached that level of awareness even among BPO employees. We still need to reach out to more BPO workers. On the other end, we also face strong opposition from the IBPAP. They keep on saying during parliamentary hearings, '[Coming up with an industry labour standard] is not an issue. It's not necessary because [BPO-IT is] a self-regulating industry.' But we are hoping that with our persistent campaigning for labour

standards alongside our other campaigns, we will be able to bring the issue to a national level [and gather wider support].'[11]

Apart from these BPO-focused campaigns, BIEN has been raising the issues of BPO workers in their workplaces to the general public. In 2013, BIEN's called for consideration among stakeholders by exempting BPO workers from working in cases of to heavy flooding during typhoon season. The call was picked up by mainstream national news organizations and elicited recognition even from the IBPAP. In 2014, BIEN launched another campaign calling for tax relief, or a three-month moratorium on tax payment, for BPO workers. While BPO companies enjoy four to eight years of tax holidays, BPO workers lose about 20 per cent of their wages and 34 per cent of their incentives to government taxes. The 3-month tax moratorium campaign also gained momentum from a broader anti-government corruption campaign that BIEN participated in. In several protests in 2013 and 2014, BIEN led in mobilizing hundreds of BPO workers in condemning government corruption involvong billions of public funds (Frialde, 2013). In the same year, BIEN strongly supported a proposal to increase the minimum taxable incentives and bonuses from PHP 30,000 to PHP 82,000, signed by the President into law in February 2015.

Gaining Ground and Launching Local Campaigns[12]

BIEN built more chapters in different IT hubs, as its membership grew in several companies. In 2014, BIEN launched local campaigns in three BPO companies over unfair management policies and practices. These resulted in varied gains and responses from the management influenced by the level of support that BIEN gained from other workers and the level of unity they had clinched. While there were prompt moves from the management side to suppress the brewing resistance and protest, two of the three campaigns moved forward, something which would not have happened were it not for the collective action of the workers.

The first campaign had to do with an account of an off-shoring company that is one the biggest American financial institutions. In late 2013, workers in the banking account of the said company began complaining of 'company policy' adjustments that reportedly aimed to maximize workers efficiency and cut on costs, but likewise made it more difficult for workers to meet performance targets. Part of the adjustments was the removal of the daily '15-minute lead time', which

11 Interview, Ian Porquia, 7 March 2015.

12 So as not to adversely affect the status of workers interviewed, most of the companies referred to in this section were left unnamed.

workers used to have before receiving calls, replaced with a 15-minute meeting every week. This lead time was normally used by agents to review updates in banking policies and laws in the United States, especially as there tends to be constant changes in a highly-regulated industry like banking. Familiarization with and up-to-date knowledge of these policies are very important, as the company and/or the agent may be held legally liable if their answers to inquiring customers were not in accordance with federal regulations.

In addition, the 'off-the-phone' time of team leaders (TLs) and deputy team leaders (DTLs) used for administrative tasks was also removed, leaving them to take care of customers' calls at the same time that they were performing administrative duties in relation to their designations. BIEN members checked with their co-workers about how they felt about the new policies, and learned that workers generally felt disappointed with and resented the policies; they felt, however, that they had no choice. When BIEN members attended coffee sessions regularly organized by the management, they raised these concerns; the management maintained it wanted to talk about the 'material' needs of the workers, and not their concerns about the new policy. BIEN then attempted to organize consultation meetings with members and circulate a 'consolidated letter of inquiry' for the workers to sign a petition addressed to management seeking explanation for the change in policies that affected workers' performance.[13]

Another campaign involved one of the leading BPO companies in the country, whose largest client is a Canadian company with a wide array of IT-related businesses. In the last few months of 2013, a group of workers were trained to service another line of business, on top of what they were then already doing. When the pioneer group learned how to handle the new system, other accounts followed, thereby doubling their workload. Instead of increasing their incentives, however, these trained workers performing multiple tasks were aghast to find out that their incentives were significantly cut down.

Apart from this, some 20 call centre agents unknowingly incurred huge salary deductions because according to the management, they were mistakenly paid twice the amount of their incentives in the last six months. Shocked by these unpleasant surprises, BIEN members in the said company immediately met and decided to write a petition asking about: 1) why their incentives were cut down instead of being increased in light of their additional duties, and 2) why the abovementioned agents had to suffer sudden and big deductions, leaving them with practically nothing at payday when it was not their fault that their incentives had been mistakenly doubled. The petition was circulated to other

13 Focus Groups Discussion, call centre agent and members of BIEN BGC chapter, 7 March 2015.

agents of the company, but even before majority of the workers were able to sign it, the management learned about such action and called for an emergency meeting with some of the agents, including identified members of BIEN. Even as the meeting was abrupt, the workers managed to demand from the company that incentive payments be increased and deductions per payday be reduced for agents who mistakenly received double incentives as such was not their fault. The management only said that the adjustments in the incentive rates were final and cannot be changed. However, they agreed to waive the double incentives mistakenly paid to the 20 agents, on the condition that the issue would be kept 'within the company' and that the petition would be stopped immediately.[14]

The third local campaign was back in August 2014, and involved workers in a Korean ESL company asking their office to exempt them from working during the typhoon season and when there was heavy flooding. The company gives 'ladderized' perfect-attendance incentives for workers with no records of absence and tardiness. The longer a worker keeps her perfect attendance record, the higher the attendance incentive she gets. If such a record is not maintained, however, she will then be removed from the list of those receiving incentives and will have to start anew.

During typhoon Fung-wong (Mario), the company notified its workers that work was not suspended even as the government had already announced a work suspension owing to massive flooding. Business had to be conducted as usual, said the management, as its clients are not based in Manila and are therefore not affected by the typhoons and floods. As a result, workers had to go the office, amidst the risks posed by the heavy rains and the floods, for them to be able to keep their incentives. As BIEN members in the said company already knew about previous but similar woes of their co-employees, they sent them text messages stating that they should not 'risk [their] lives' by going to work, and called on their colleagues to instead fight for their safety when they resume work the following week. The response was positive, as many of the workers decided not to leave their houses that day. The following week, a petition letter was circulated by BIEN members to the workers, containing four demands: (1) dialogue between the management and the employees; (2) full incentives for those who were unable to work due to the typhoon; (3) additional pay for those who worked during the typhoon; and (4) a new company policy that will allow for emergency leaves and hazard pay during typhoons and other natural calamities.

Close to 50 out of the 55 workers signed the petition; other workers were not included in the petition as they were then still on probationary status. The letter

14 Interview and Focus Group Discussion, members of BIEN-Ortigas chapter, 7 March 2015.

was then sent to the manager, who then called for a meeting. One of the BIEN members who led the signature campaign recalled the exchange between them and the management during the meeting:

> 'Everyone was called to attend the meeting. The head of human resources, the head team leader and the head of research and development talked to us but none of the Korean bosses were present in the meeting. BIEN members led the dialogue on behalf of the workers. There was a heated debate between us and the management. They said that what they did was in accordance with the government's announcement – that work is suspended in the public sector, [but there should be a] specific announcement for the private sector. On our part, we said that that was utterly inhumane. We cited several cases when a worker died because he accidentally stepped on an open wire while crossing a flooded road. We asked them if they'd be willing to shoulder the responsibility once we [figure in an] accident? They kept on arguing that it was our choice not to go to work. We maintained that that it was like a choice without options because if we do not to go to work, we lose the incentives we built for months, some of us even for years. They also threatened us that forming an organization and resorting to collective action are grounds for termination. We asserted that based on the Labour Code, workers have the right to form an organization to protect their interest. In the end, they agreed to bring back the incentives of all workers who did not go to work on that day, but they ignored our 3rd and 4th demand. After the meeting, they posted a memo on the bulletin board saying that all incentives will still be given to workers who were absent during the typhoon. And they did.'[15]

The First Union: The Case of West Employees

In the first quarter of 2015, BPO workers made history in organizing workers in the sector when the first BPO workers' union, the United Employees of West Contact Services, Inc. (WCSI), held its first general assembly and was later registered as a workers' union with the DOLE, with assistance from BIEN. assisted the workers. Unlike traditional unions formed after many years of discrete 'solid organizing,' organizing UEWCSI had to be fast-paced and spontaneous at the beginning. According to Porquia and Francis Ugay, BIEN member and elected president of the UEWCSI, the sudden acquisition of WCSI by Alorica, an American BPO firm, prompted the quick organizing.

15 Interview, members of BIEN-Ortigas chapter, 14 March 2015.

WCSI is a division of West Corporation, a US-based multinational communications company. It has two contact centres in Metro Manila and employs some 5,000 employees. On 7 January 2015, Alorica Philippines Inc., a subsidiary of the US-based BPO company Alorica. Inc., publicly announced its acquisition of WCSI. West employees had no prior knowledge of the reported acquisition, as they were apparently not informed by the WSCI management. According to Ugay, WCSI employees only learned about the acquisition of West by Alorica in a news program on a cable channel.

Incidentally, some WCSI employees used to work for Alorica when the company they originally worked for was likewise bought by Alorica. After the acquisition, their benefits were reduced; some were transferred to provincial worksites; and others suffered the consequences of downsizing by the company. The report of Alorica's acquisition of WCSI thus resulted in fear and a feeling of insecurity among WCSI employees. On 15 February 2015, a group of 18 WCSI employees, some of whom are BIEN members, gathered and wrote a Letter of Inquiry addressed to the management. The letter sought clarifications on the reported acquisition and on the possible consequences for employees when it takes effect. However, WCSI management gave no clear response to the inquiry after a week.

On 21 February, a bigger group of some 30 employees of WCSI met with BIEN national secretariat and labour lawyers. The group discussed possible courses of action that the employees can take to safeguard their jobs and benefits, amid the reported buy-out. On the same day, the group decided to initiate an organization, the United Employees of West Contact Services, Inc., and immediately organized more WCSI employees for membership to the organization. The following day, 22 February, a handful of WCSI employees for the company's Comcast account put up a social media page titled 'The Truth', and started sharing information about the reported 'buy-out' of WCSI by Alorica and the possible consequences for the employees. In just a matter of hours, from the evening to 22 February to the morning of the next day, the page increased its membership to 2,000 members as the issue of the acquisition, and its possible adverse consequences to the employees' job security and benefits, spread to more workers.

Previous to this, BIEN publicized the issue and released a press statement on February 21 outlining the economic risks that the acquisition poses to some 5,000 workers of WCSI. The statement was picked up by the national media. From then on, WSCI employees, with the help of BIEN Philippines, started to hold after-shift meetings to discuss their actions and demands to the management. Each day, the number of employees attending their caucuses increased. Employees from other accounts and from their satellite call centre in Mandaluyong, also took part in

such gatherings. The looming company acquisition at the time made workers feel the need to unify their ranks and defend their jobs. Eventually, they agreed on four major demands to the WCSI management: (1) option for severance pay; (2) security of tenure; (3) no 'floating status' for workers; and (4) full absorption of employees who would like to stay. These demands were contained in a letter which the group circulated for signing by a greater number of employees.

Apart from holding meetings, UEWCSI employees also exchanged information on what their actions should be through social media and SMS. In a brave display of solidarity and defiance against the management, WSCI employees wore black shirts and red pins at work on February 23. Even at an early phase, some employees identified by the company as members of BIEN experienced harassment and threat; they were barred from proceeding to their worksites because they wore black shirts and red ribbons. But this did not deter the members of UEWCSI from carrying on.

Apparently, this put pressure on the WCSI management, which then organized a focus group discussion (FGD) with selected employees the following day. At the FGD, the management made no assurance that employees will get to keep their status and benefits after the acquisition. Instead, the company insisted that employees 'trust' their WCSI managers when they say that business will go 'as usual', even amidst Alorica's acquisition of WCSI.

On February 24 and 25, the management called for a town hall meeting supposedly to address the issues raised by the employees. However, Sarah Prestoza, a WCSI employee who was eventually elected as UEWCSI vice president, said the management essentially did not commit to anything during the said meeting:

> 'They [the operations manager and the top management officials of WCSI] were essentially asking us to give our full trust to them, just surrender. How can that be possible when we were essentially sold without us knowing it? We were demanding that they disclose [the details of] the deal between West [WCSI] and Andy Lee [reported owner of Alorica]. But they refused to give us any information about the terms of the acquisition. So naturally, we felt very insecure. They insisted that it's business as usual so we need not worry. It was a long discussion. And then finally, they gave in and said there will be 'full absorption', meaning no one will be retrenched. So the employees were somehow appeased. But when we asked them to put it into writing or merely sign the back of our employment contracts with West [WCSI] as proof and safeguard for us that after the transfer. we will [keep] the terms of our employment in Alorica, they refused and said they cannot commit because they are not the owner of Alorica.'[16]

16 Focus Group Discussion, WCSI employees, 16 March 2015.

In a bold historic move on February 26, over 100 employees of WCSI and their supporters lit candles outside the Makati office of WCSI, to insist on their demands and negotiate a deal with the employees before the acquisition takes effect on March.

The series of failed meetings with the management of WCSI forced the employees to rely on their strength to ensure that they will be protected even after the acquisition. UEWCSI started mapping out an organizing plan to form a union that will have the power to negotiate with their employers, be it with WCSI or with Alorica. On 27 February, UEWCSI members gathered to elect their officers in the interim, until they have gathered the sufficient number, or 20 per cent of the rank-and-file employees, to hold a general assembly and officially register a union of WCSI employees. After a month of daily meetings of strategizing and studying unionism, on March 28, the UEWCSI held its first general assembly where it ratified its constitution and approved their draft version of a collective bargaining agreement, which they will be submitting to the management of the WCSI.

The process, however, was never easy, and victory remained elusive. The acquisition happened shortly after the union was formed. UEWCSI has yet to be recognized as a union and thus cannot exercise any bargaining power. However, the overt resistance workers deterred Alorica to a certain extent from implementing drastic changes in the first few months of transfer such that the WCSI workers were maintained in their posts and benefits and salaries remained the same. However, Alorica still refuses to put in writing that the employment terms of West employees will be maintained. Nevertheless, the initial gain gave the union time to continue organizing, to eventually become the United Employees of Alorica. They vow to continue the fight for a pro-worker collective bargaining agreement, and to help in organizing more unions in the BPO industry.

Lessons and Prospects in Organizing BPO Workers

The experience of BIEN Philippines in organizing BPO workers, and the attempts of workers themselves to organize against repressive company policies and practices demonstrate the emergence of conscious subjects in the 'booming' Philippine BPO-IT industry, an industry that is heavily dependent on the exploitation of cheap and silenced workforce. Despite the varied schemes employed by companies to suppress the workers' right to organize– from brazen prohibitions against forming or joining organizations at the worksite, to their obstinate insistence on self-regulation and the clear attempts to create a climate of union hostility at the national level –significant advances in organizing BPO workers have been initiated, sustained and continuously developed by BPO workers themselves.

From a handful of friends, BIEN, for instance, has developed into a national network with several chapters in various IT hubs in the country. Key strategies to BIEN's growth into a nation-wide network are its campaigns addressing common workplace issues for BPO workers and the formation of core groups in various IT hubs that allowed them to continuously expand and consolidate members across the country. As BIEN continues to develop its broader campaigns for industry labour standards and at the same time to widen its base, its local chapters gained ground and launched local struggles that fought against company policies that intensify the exploitation of workers and attack their rights. While the results of these local campaigns have so far been varied and limited, these struggles represent the growing discontent and the increasing unity among BPO employees as emerging conscious subjects. The organization of workers in WCSI, for instance, is still several steps away from enjoying their formal and legal right to collectively bargain, but its formation represents a landmark achievement – a breakthrough – signalling the recognition of BPO workers as a class in opposition to sinister corporate interests.

More importantly, after nearly four years of existence, BIEN has drawn valuable lessons from their experience – lessons about the character of the BPO industry and how their organizing and campaign strategies need to be flexible and constantly refined to advance workers' rights. BIEN enumerates a few of these:

- Campaigns need to cater to the interests and/or needs of BPO workers; at the same time, they need to be creative to catch attention, as exemplified by the 'Let there be light' and 'Let it flow' campaigns that became popular because of its name recall and its attempt to address serious workplace concerns for BPO employees.
- Campaigns need not be confined to the issues at work; they can include other social issues that affect or invite the interest to BPO employees based on their general characteristics. Many BPO employees were mobilized during the march against government corruption, especially because BPO employees pay high income tax returns. BIEN chapters also mobilized many BPO workers in their relief drive for the victims of typhoon Haiyan (Yolanda).
- When one starts a campaign, especially a local one, there should be no turning back. BPO companies have plenty of resources and are especially careful to prevent 'workplace disputes' and unions by employing all means possible, legal or otherwise. Thus, local campaigns should be planned carefully; each move should be done promptly; and organizers must have the courage to fight on even in the face of threats and harassment.

- Raising awareness of workers' rights and the value of collective power is the key to successful organizing. BPO employees can have many complaints about their work. They express resentment individually by deliberately dropping the calls of customers; others resort to formal complaints filed before pertinent government agencies. BPO workers must be made capable of going beyond individualist tactics, by making them understand and appreciate the power of collective action.
- Organizing chapters in different hubs are effective to widen the network; to effectively bargain with employers, however, there must be a more strategic plan on how to build unions at the company and possibly even at the industry level.[17]

The so-called crisis of capital in the BPO industry – as manifested by the frequent mergers, buy-outs and acquisitions due to tight competition – perennially subjects workers to heightened job insecurity and exploitation. The experience of BIEN and the other BPO employees and organizations cited in this chapter has taught them that BPO employees need to form solid and independent unions to protect their rights and interests, especially in the context of a rather fluid, volatile and 'transient industry.

But as the BPO industry in the Philippines is part (and largely a result) of the capitalist logic of maximizing profits from cheap labourers especially in underdeveloped economies, there lies long-term challenges to the sustainability of the industry itself and consequently, questions on the strategic direction of organizing BPO workers. BIEN is not losing sight of this. Porquia avers:

> 'Work in the BPO industry is transient, so is the industry itself. When the client pulls out their account, the workers' jobs are also on the line. It is precisely because of the [capitalist] crisis why BPOs exist and [continue to grow] in the Philippines. Definitely, we need to unionize, we need a labour standard, to have some kind of protection from rights violations and to have some safeguards when clients pull out from BPO [firms]. Building unions is thus a tactical goal. But in the long run, we have to question outsourcing itself, if it is a sustainable industry. It is difficult and not good for us to say that we are 'anti-outsourcing' because we are part of the industry. But ultimately, it boils down to the character of our economy. If BPO companies suffer more crises in the future and eventually find cheaper labour in other countries, are there other available jobs for us?'[18]

17 Focus Group Discussion, BIEN officials, 6 March 2015.

18 Interview, Ian Porquia, 7 March 2015.

Indeed, ending the cycle of deepening exploitation and widening job insecurity, as engendered by intensified competition among firms in a capitalist system, go beyond localized organizing/struggling on a per company, per industry or per sector/class-basis. The lessons from the struggles of an emerging class of BPO workers in the Philippines also point towards the urgent need to for BPO workers to unite and reclaim rights in an increasingly exploitative industry and in the long run find and shape viable alternatives to an industry that is perennially insecure and in crisis.

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CHAPTER ELEVEN

Challenges of Organizing Migrant Workers in Malaysia

by NETWORK OF THE OPPRESSED PEOPLE

(JARINGAN RAKYAT TERTINDAS/JERIT)

Introduction

Malaysia has been experiencing close to full employment since 1990. Malaysia is not a signatory to many United Nations Human Rights Covenants but it is a signatory to the UN Convention on Elimination of Discrimination Against Women (CEDAW), the UN Convention on the Rights of the Child (CRC), and has ratified five of the eight core ILO Conventions. Malaysia is also a member of the UN Human Rights Council, and a signatory to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, adopted by ASEAN in January 2007. According to ASEAN insiders, it was Malaysia that played a major role (along with Singapore) in watering down provisions of the ASEAN Declaration and ensuring that undocumented workers, and families of migrant workers, are not included in the Declaration's coverage. Nevertheless, Article 8 of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers states that governments shall 'promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers' (Robertson, 2008: 1-2).

Migration Working Group (MWG) in their 2013 Universal Periodic Review (UPR) submission stated there were an estimated 1.9 million authorised migrant workers in Malaysia. There are an additional 2.2 million migrants with irregular status, some of whom entered Malaysia legally but became undocumented for various reasons. Of these, there are an estimated 250,000 authorised foreign domestic workers and around 100,000 foreign domestic workers who have an

irregular status (Migration Working Group, 2013). The government accords different rights to 'highly skilled' migrant workers, referred to as 'expatriates', and those it considers to be 'unskilled' or 'semiskilled', are officially called 'foreign workers'. Malaysia criminalises irregular entry and stay in Malaysia under its Immigration Act (1959/63), subjecting all those arrested on these grounds to mandatory detention and imposing harsh sentences on those convicted, including whipping, which constitutes torture. These individuals are held in detention depots indefinitely while awaiting deportation to their countries of origin (Migration Working Group, 2013).

Migrant workers in Malaysia are a large workforce in six main sectors: manufacturing, plantation, construction, agriculture, services, and domestic workers. They are largely from five countries including Indonesia, Nepal, Bangladesh, Myanmar, and India. Others from Pakistan, Vietnam, Cambodia, Thailand, and Philippines are in small numbers. The entry of foreign workers increased significantly in the late 1980s. In 20 years, from 1985 to 2005, the numbers increased by 367 per cent. From 1,240,200 workers in 2005, it increased to 1,817,817 as of July 2011. The rapid expansion of the manufacturing and industrial sectors created a large number of employment opportunities in the country.

According to Human Resources Minister Datuk Richard Riot, migrant workers in Malaysia reached 5.8 million, which represented more than one third of the labour force. Among them, 2.9 million were undocumented workers based on his department's statistics. It's important to note that a huge number of refugees in Malaysia are also employed in the informal working sector and are labelled as undocumented migrant workers, since Malaysia is not a signatory to 1951 Refugee Convention, and hence the refugee status does not exist within the legal framework. The number of refugees in Malaysia was estimated to be around 142,160 people, including those from Myanmar, Afghanistan, Iraq, Somalia and Sri Lanka (April 2014).

The importation of migrant workers into Malaysia is a necessity whenever there is an acute shortage of labour in its multi-sectoral development programs. Malaysia desperately needs migrant workers in order to sustain economic development and rapid economic progress in the country. This situation is also due to the fact that many Malaysians are no longer willing to perform jobs that they consider as 3-D (dirty, difficult and dangerous), creating demand for migrants in sectors such as plantations/agriculture, construction, manufacturing and some service occupations. The lucrative cheap-labour policy practised by employer makes migrant workers more favourable instead of locals in the workforce.

One should remember that migration will increase in the future not decrease, given the global demographic trends, widening disparities in income, human securities and rights across countries, increasing migrant networks and environmental and climate changes.

Challenges Face by Migrant Workers

The Malaysian government's migration policies are prone to ad hoc changes (partly linked to the high number of undocumented migrants) and given to arrests and deportations only to back down upon pressure or complaints from employers (Piper, 2006: 361). Many migrant workers are employed throughout Malaysia in plantations, construction sites, textile factories and also as domestic workers. They experience restrictions on movement, deceit and fraud in wages, passport confiscation and debt bondage, which are practices indicative of trafficking. Some Malaysian employers reportedly did not pay their foreign domestic workers three to six months' wages to recoup recruitment agency charges, making them vulnerable to trafficking.

For instance, in 2012 Tenaganita received 263 cases in which it recorded 800 forms of rights violations – including non-payment of wages, withholding of passports, isolation, and non-communication, various forms of abuse and violence and forced extension of contract from domestic workers. Thirty-two per cent of the women complained of sexual abuse and rape; 22 per cent, when rescued, were severely malnourished due to denial of decent and sufficient food; 55 per cent had unpaid wages, and many complained that they were forced to work beyond their two-year contract as employers found it difficult to get replacement workers. Documented migrant workers who have entered Malaysia to work are required to work only for the employer who brought them into the country. Work permits are good for one year and can be renewed annually for up to three years. A migrant worker's employment can be terminated, and the worker's work permit cancelled, by the employer at any time – and without the permit, the migrant worker becomes immediately subject to arrest and deportation. The Police and Immigration Department is tasked with enforcement, but have delegated significant powers to the People's Volunteer Corps (Relawan Rakyat Malaysia, commonly known by its Malaya acronym, RELA), which is an armed (yet poorly trained and part-time) volunteer corps that has been repeatedly accused of serious human rights abuses against migrant workers. Undocumented workers who are arrested by the authorities and/or the RELA are sent to detention camps. The Malaysian Government has set up Special Courts in the detention camps – but these courts have been strongly condemned by the Malaysia Bar Council as facilitating a court process where migrant workers are not given the right to

understand charges and processes against them in their own language, and are effectively denied the right to legal counsel. Penalties for being an undocumented worker in Malaysia include monetary fines, imprisonment, corporal punishment (up to six lashes for men, none for women) and deportation.

Protection Issues

The key issues and concerns for foreign workers that centre upon workplace grievances can be broadly classified under two headings: 1) employment related, and 2) welfare, occupational health and safety issues. Employment related issues are mainly about non-payment or under-payment of wages (Piper, 2006: 362). Major issues of terms and conditions of work are regulated by the Employment Act 1955 and the Workman Compensation's Act overseen and implemented by the Labour Department under Ministry of Human Resource in Malaysia. But in most cases, the employer violated the Acts. The Employment Act 1955 is more concerned with monetary benefits such as annual leaves, sick leaves, maternity allowance, overtime and so on. Apart from this, regarding termination and reinstatement of the workers are covered by the Industrial Relations Act, while the unions' administration issues are regulated by the Trade Union Act. All these laws are administered by the Ministry of Resources (Robertson, 2008: 2). The Act is of compelling nature that failure to provide any of those benefits is an offence. An employer can be prosecuted in court should they fail to adhere to the Act. On the other hand, the Industrial Relations Act 1967 is more of a persuasive nature. Industrial Relations problems are resolved through negotiation and reconciliation.

According to the Trade Union Act of 1959 and the Industrial Relations Act of 1967, it is possible for a migrant worker to join an existing labour union and participate in its activities. However, Article 28(a) of the Trade Union Act requires that any union officer must be a citizen of Malaysia, effectively disqualifying migrant workers from serving as leaders of a union. This is merely discrimination with the situation where the number of the migrant workers in the country is increasing tremendously.

Oversight of migrant workers is divided among ministries, and even within ministries, between various departments. The MHA (Ministry of Home Affair) is in charge of approving applications to bring in migrant workers and overseeing manpower companies, while the MHR (Labour Dept. and Industrial Relations Dept.) is tasked with receiving and acting on complaints by migrant workers. This is where the migrant workers sometimes get caught into the contradictory policy by two Ministries. For example, under the Immigration law, no migrant workers can associate themselves with any organization or association while

they are working here. At the same time, according to the Trade Union Act 1959, migrant workers can be members but not leaders of associations and unions. Based on this, migrant workers are allowed to join in a union yet there is an element of discrimination of not holding positions in the union. Due to this contradiction, the unionization process is deeply difficult.

Another example is unlawful termination of the migrant worker by the employer. The worker has the right to seek justice against his wrongful termination under Industrial Relation Act 1967. Industrial Relations Act 1967 clearly protects the rights and welfare of employees. However, the employer at the same time is given the right to terminate the work permit of the worker through Immigration Department once he has been dismissed from the job. The moment the worker loses his work permit, then she/he becomes an illegal in the country. This makes it difficult to seek justice against the wrongful termination by the employer. Right to redress is denied by the Immigration Department, an agency of the Ministry of Home Affairs (MOHA), who sees this issue as an issue of national security.

The Immigration Department does not respect the provisions of the Employment Act nor the Industrial Relation Act. This prevents the Human Resource Ministry agency from issuing a work permit so that the terminated worker can be employed by another employer while awaiting trial process to be completed. Thus, workers who are laid off unjustly have to return to their home countries without getting defence (against unjust termination) or work illegally to support themselves until the completion of the case. Even though the Malaysian government says that the terminated migrant worker can stay in the country under a special pass until his court case is over, the special pass does not allow them to work. In normal circumstances, any case in the labour court or industrial court can go on, even to more than two years and depends on the complicity of a particular case. As such, how will a worker sustain his/her basic needs without work and wages?

Another issue, the system of outsourcing of labour, introduced by the government in 2006, contributes to exploitation, forced labour, and labour trafficking. Under this system, companies licenced to practice outsourcing are permitted to recruit and manage foreign workers, deploying them to work for different companies. Foreign workers under this system have been forced to engage in work other than what they were promised, have been left with no work and no pay, and have been given inadequate food and accommodation. Breaches of their terms of contract occur frequently, especially in relation to the payment of wages.

Migrant workers are denied the right to healthcare:

1. Malaysia practices mandatory testing for foreign workers for 15 infectious diseases and pregnancy pre-renewal of work permit every 2 years. A foreign worker tested positive is immediately deported, including pregnant women. They are informed that they are 'not fit to work' and are sent back.
2. Government hospitals are charging double fees to migrants compared to local. These migrants are paying 'Levi' (a form of tax) to the government yearly. When this 'levy' was introduced, it was said to include payment for services provided to migrant workers, including health care. Now they have to pay for treatment in government hospitals. The latest circular by the Health Ministry to all State Health Directors, Hospital Directors, and District Health Officers to implement the new fee schedule for foreigners effective 1st January 2015 is a continuation of denying the right to health for migrants in this country. In the new *Fees for Foreigners* specifies that the deposit for foreigners requiring admission to the Third Class Ward in Government Hospitals is RM 600 (USD166.57) for medical cases and RM1200 (USD333.15) for surgical and obstetric cases. This is a huge sum of money for foreign workers and refugees and has resulted in serious injustices.
3. The Malaysian government does not include migrant workers in its HIV/AIDS programmes and thus denies them access to information, counselling and support services. Migrant workers job security is continuously at risk, due to mandatory testing, which has led migrants not to seek treatment. Undocumented migrant workers face risk of arrest if they seek treatment in public hospitals and thus do not seek treatment.
4. Migrant workers are among the lowest paid group in our country, but the cost of treatment is very high for them. The high cost of treatment causes migrant workers to delay seeking treatment in a clinic or hospital. The Ministry of Health tells us that the incidence of diseases such as TB has increased massively since the arrival of migrant workers. Examination and treatment costs that are high not only endanger the health of migrant workers involved but also threaten the health of all residents of Malaysia.
5. Most of the employers in Malaysia are not taking care of the migrant workers' health issues. Migrant workers are forced to work long hours until they fall sick. At the end of the day, they sacrifice their lives. There are a number of stories of migrant workers who have sacrificed their lives (NAMM, 2014; Rasiah, 2014).

Organizing Migrant Workers

Principally, the right to organize and join trade unions or to form other organizations is well established under the international human rights law. The freedom of association and collective bargaining are fundamental principles that the International Labour Organization (ILO) has championed, which are universally applicable to all the people regardless of the economic and development situation. Therefore, it also applies to all the migrant workers without distinction. Malaysia is a member of ILO, yet still has not ratified the ILO Convention No 87 on the Freedom of Association, which comprised of the right to organize and it is one of the four core principles to obey by all the members of ILO (Piper, 2006: 364).

Various NGOs in Malaysia have been active on labour issues involving women and foreign workers for quite some time. However, NGOs that exclusively focus on migrant workers do not exist, although one organization (Tenaganita) has practically become a migrant worker NGO because of the sheer number of individual migrants seeking their assistance (Piper, 2005: 15). Other than Tenaganita, North South Initiative, JERIT (Oppressed Peoples Movement) and Parti Sosialis Malaysia (The Malaysian Socialist Party) have been consistently highlighting migrant workers issues as one of their campaign across the country.

Trade Union Involvement in Migrant Workers' Issues

Starting from one federation of trade unions in the 1950's, there are today three trade union federations holding similar ideological positions. All major industries and sectors have unions that are affiliated to the Malaysian Trade Union Council (MTUC) with a total of approximately 800,000 members today. Having been established in 1949, the MTUC is the oldest National Centre representing Malaysian workers and has been officially registered under the Societies Act since 1955. There are too many oppressive laws and practices. It is in general hard to organize a national union, let alone migrant workers (Piper, 2005: 15).

Union size and structure are heavily regulated through oppressive laws such as the Trade Unions Act 1959 and the Societies Act 1966. Under these Acts, the labour movement has been weakened because the union can only represent workers in a particular industry or sector. These regulations have limited the power of the unions and resulted in the MTUC being weak. This has limited the role of MTUC from joining and from participating actively in decision making or even in wage negotiations or assisting in any industrial disputes. This measure has weakened political integration between parties and labour unions. Unions

have, thus, remained politically feeble and vulnerable to state control (Piper, 2006: 366).

There are very limited or rather few services offered by the MTUC to migrant workers. Some scholars stated the reason behind this is that many migrant workers in the traditional sectors are undocumented or obliged under their contracts to stay away from joining unions and the other reason is the policy stance that the MTUC took on issues related to migrant workers (Piper, 2005).

Despite the fact that only around 8 per cent of all workers in Malaysia are unionised, the MTUC is recognized by the government as representing workers in Malaysia and is consulted by the government on major changes in labour laws through the National Joint Labour Advisory Council (tripartite body) (Piper, 2005: 15).

MTUC's position on migrant workers is not consistent and mostly depends on the leadership. Historically, the MTUC's response to labour migration in Malaysia took the conventional anti-immigration line that is typical for trade unions in receiving countries in general. It pressured the government to stop the flow of foreign labour because foreign labour depresses wages and weakens incentives to attract Malaysian workers. The argument was that if employers increased the wages and conditions, there would be no need for foreign labour. In 1980, for instance, the MTUC objected to the presence of immigrants in the plantations in Malaysia because, according to a spokesperson, the real reasons for labour shortages were the 'colonial attitudes' of plantation employers. The MTUC had called for the introduction of the minimum wage but without any success (Piper, 2005: 19). In fact, the implementation of Minimum Wage Act in 2012 was because of the hard work and consistent campaigns by JERIT and PSM, an NGO and an opposition political party, respectively.

In general, the issue of migrant workers was addressed only in MTUC's advocacy and public statements. Direct organizing and provision of services, as well as institutional representation of migrant workers, seem beyond the scope of the trade union work such as collective bargaining (Pipe, 2006: 366). Likewise, there are unions, which seem to support migrants on the surface, such as the National Union of Plantation Workers that takes a monthly membership fee from migrants but are said to do nothing when it comes to concrete protection (Piper, 2005: 17-8).

Individual Unions

Individual member unions have been more active or outspoken in trying to improve the lot of migrant workers. Since 1979 or even earlier than that, the Timber Employees Union called for the abolition of foreign contract labour in

the timber industry and to be replaced with a different system. About 50 per cent of the workers in this industry are on short-term contracts and cannot join the union.

The Union started to pay concrete attention to the plight of the foreign workers since 2005, which is highly important considering that 30-40 per cent of all timber workers are migrant workers from Nepal, Indonesia, Bangladesh and Vietnam. In Sabah, the percentage is more with 80-90 per cent are migrant workers of whom, 50 per cent of them are undocumented migrants from Indonesia and Philippine. The timber union tried to organize workers at the factory level in Sabah and Sarawak where the Union has its own branches. They faced so many challenges and constraints to organize the workers, including language barrier; company practice of unlawful dismissal of migrant workers who join trade unions; Immigration policy on immediate deportation of foreign workers upon dismissal. Therefore, the Union started to organize the workers secretly with the target to ensure the membership of all foreign workers from a specific company and then to pressure the individual company to recognize and accept union representation. This is not an easy task because the workers tend to be intimidated, they are not used to the political environment of trade unions, and they do not trust the union. In the case of undocumented migrants, this union has visited the Immigration Bureau and reported employers' illegal practices, but the workers were nevertheless deported back (Piper, 2005: 18).

Role of NGOs and Political Party

NGOs have for a long time played an important role to fill the gap in addressing labour issues. Due to lack of political space for certain types of activism and migrants' legally constrained status, it is sometimes highly precarious for migrants to set up their own organizations. In such circumstances, migrants depend on local citizens to take up their concerns (Piper, 2006: 370). Malaysian CSOs recognize the importance of inter-governmental engagement on migration, particularly as migration will continue to be on the rise in this age of globalization (MFA, 2009: 39).

1. Tenaganita

Tenaganita was formed in 1991, which originally focused on women workers' problems, but it has now developed to specializing in service delivery and advocacy in particular for migrant workers in Malaysia. Tenaganita has formed great links and networks with the regional and international organizations. The organization was taken more serious when it came out with the report on the deplorable conditions of migrant workers in migrant detention centres in

Malaysia. This has resulted in the arrest and followed by charges against the late Dr Irene Fernandez under the Printing Presses and Publications Act for publishing 'false news'.

Tenaganita's key focus is on empowering sex workers, migrants, and female workers in plantations and factories, with respect to foreign migrant workers, Tenaganita has a whole range of activities related to the violation of labour rights, health, HIV/AIDS, arrest and detention, education and training on labour and immigration laws, occupational health and adapting to Malaysia. Tenaganita also offers services such as counselling and legal aid to migrant workers. They advocate for the 'Right to Work' pending court proceedings and have also launched a campaign on migrant workers' 'Right to Legal Stay' (in response to an unofficial announcement by the Immigration Department that any migrant worker awaiting court proceedings exceeding three years will be sent to the detention camp). Tenaganita has produced a documentary film entitled 'Breaking Labour' (June 2005) as well as an audio CD entitled 'Silenced Voices' (April 2005) which consists of 15 songs in various languages portraying the struggles, emotions and feelings of migrant workers. The later was the subject of a feature on the BBC World Service (radio). Overall, Tenaganita has been extremely influential in speaking out on behalf of all migrant workers and advocating for their rights (Piper, 2005: 12-3).

2. Jaringan Rakyat Tertindas (Oppressed Peoples Movement, JERIT)

JERIT is a coalition of NGOs and community groups. JERIT in Malay acronym known as *Jaringan Rakyat Tertindas* (Oppressed Peoples Movement) has been established since 2002. JERIT has been campaigning for minimum wage for all workers including migrant workers. JERIT also campaign for decent housing policies; and against forced evictions of plantation workers and urban pioneers. JERIT's contribution was obvious in the implementation of the minimum wage policy in Malaysia. JERIT together with several other NGOs and PSM has started a serious campaign on the implementation of Minimum Wage since 2006. JERIT has conducted many campaigns like signature drive campaigns; protests, awareness programs like distributing leaflets; demonstrations at the Parliament house and many more (Palani, 2011). The implementation of Minimum Wage was seen to be impossible, but it eventually gained momentum and was implemented in 2013. The government included documented migrant workers in the implementation of the minimum wage on 1 January 2013, of MYR 900 (US$ 290) in Peninsular Malaysia and MYR 800 (US$ 258) in Sabah, Sarawak and the federal territory of Labuan. However, there are concerns about the government's recent decision to make documented migrant workers – rather than employers

– pay the expensive government-imposed 'foreign levy' (an annual tax) through wage deductions, which breaches the concept of a 'basic wage' as well as the principle of equality (Migration Working Group, 2013). In fact, JERIT and PSM have set up hotline numbers around the country to monitor the implementation of the Minimum Wage in all the sectors (Yatim, 2013). They have received many complaints throughout the countries including from the migrant workers.

3. The Women's Aid Organization (WAO)

The Women's Aid Organization was set up in 1982 primarily to shelter battered women and their children. Since its inception, WAO began receiving several isolated cases of domestic worker abuse and in 1995 (after a series of severe cases), it started documenting the experience of FDWs in detail. As a result, it has evolved into a women's rights group which incorporates migrant women domestic workers into its advocacy for women's rights and its research efforts on women and domestic violence, together with the provision of shelter for abused women. In this way, it is the most prominent NGO that focuses on migrant women *domestic* workers in Malaysia (Piper, 2005: 13).

4. Parti Sosialis Malaysia (PSM)

PSM is leading a coalition on the right to redress of migrant workers. This is to ensure migrant workers are allowed to stay in the country if their employer unlawfully terminated them until they get justice. PSM has been actively conducting many cases affecting migrant workers. For example, the case brought by Myanmar worker Aye Cho, who has been dismissed illegally (Rasiah, 2012). As the campaign is new, there are not many to be reported here.

Five Case Studies

1. Workers from Recron Group protested against The Reliance Group – 12 March 2013, Nilai, Negeri Sembilan

More than 500 workers who have been working in Recron staged a strike for five days when the company which is a member of the Reliance Group led by the India's billionaire Ambani refused to implement minimum wage RM 900 for foreign workers. Most of the workers have been earning below the required Minimum Wage as low as RM 500 to RM 700 per month, in spite of working 12 hours per day, for 30 days without leave. The foreign workers mainly came from Nepal, Bangladesh and Vietnam. Recron is an international company that producing yarn-spun yarn and fabric that are exported to most part of the world such as USA, Canada, Latin America, Middle East countries, South East Asia

and many others. In Malaysia, the company employed 6,800 workers mainly based in Nilai and Malacca.

The migrant workers who were unhappy with the different salary scales between locals and them believed that they should be paid for hours that they work. PSM and JERIT who were involved in organizing these workers were deeply disappointed with the labour department when they abandon the workers, and they left the workers concerns the relevant embassies. The labour department failed to act on the issue after it was brought to their attention. After much discussion among themselves as well as with PSM activist, the workers decided to discuss whatever option is available (PSM Semenyih, 2013).

2. Recycle Energy Sdn Bhd workers hold picket to demand unpaid salary – 14 October 2014, Semenyih, Selangor.

167 migrant workers from Recycle Energy Sdn Bhd held a picket at their factory after the company failed to pay their salary and deduct Employees Provident Fund (EPF) for 5 months. The employees complained that their employers claimed that they have deducted EPF every month, but it wasn't reflected in their statements. The workers also claimed that the employers also failed to pay the overtime fees. According to the workers, the employers gave reasons that they don't have enough money to pay the salary and so on. This responds from the employers has led workers to filed their case at the labour department with help from PSM and JERIT. The labour department instructed the company to pay the worker's salary, but even this order fell on deaf ears. The workers seek assistance from PSM to hold the picket (Cheema, 2014). After two pickets, discussion, and through media attention, the employer finally paid the pending salary and EPF.

3. Aye Cho, 2 October 2012

Aye Cho was a victim of unlawful termination. He was a migrant worker from Myanmar. The working condition in his company hasn't the same as he was initially promised. Finally, on February 2012, Aye Cho together with his four other fellow workers has taken the courage to seek justice from their employer and requested the following from the employer:

- He and his friends requested the employer to calculate the overtime after the normal 8 hours of work and not after the 11 hours.
- Secondly, they demand the company to stop the RM 100 levy money that being deducted monthly to be stopped as per the circular from the government in 2009, which stated that the levy money to borne by the employer.

This action has made the employer furious and immediately terminate Aye Cho and his friend. Although, Aye Cho and his friend apologised and requested the company to accept them back, but the employer was adamant and chase them out from the factory, and the boss held their working permits and passports. This has led to arrest and detention of Aye Cho and his friend. After they had failed to get justice, Aye Cho and his friend decided to filed their case at the Labour Department. At the labour office, the officer who handled the complaint later visited the factory and decided to buy the employer's story that the workers had absconded from the workplace. After this incident, Aye Cho and his friend approached PSM to seek advice. PSM helped the workers to file for reinstatement with the Industrial Relations Department and open their earlier complaint at the labour department. The employer was summoned by labour department for discussion, but it could not be settled because the employer only offered RM 2000 and air ticket to Myanmar. As their former boss cancelled their work permits, PSM helped Aye Cho and his friend to get Special Pass to legitimise their stay in Malaysia till he finds a solution for the case that he filed in industrial court. In the midst of waiting, Aye Cho's friend gave up and flew back to Myanmar. Meanwhile, Aye Cho decided to stay and fight.

Aye Cho's case at the labour court is for claims totalling RM19,800 and that at the industrial court is for reinstatement under Section 20 of the Industrial Relations Act. The RM19,800 represents all the unpaid labour the boss had extracted over the 4 ½ years he worked there - 2 ½ hours of unpaid overtime work every day for 4 ½ years, denial of paid annual leave for each year of work and levy wrongfully deducted from wages every month after April 2009. Aye Cho's application for a fresh permit was not allowed although an appeal was sent to the Home Minister Hishamuddin Hussein, but no action was taken. Finally, Aye Cho decided to go back to Myanmar but with victory (Rasiah, 2012).

4. More than 5000 migrant workers protest ends in victory, August 2014

More than 5,000 migrant workers working in JCY Co. Ltd, an electronic factory protested in Tebrau Industrial area in Johor Bahru over the negligence of their employer when their fellow worker died of high fever (Fernandez, 2014). Migrant workers from Nepal, Myanmar, Vietnam, Bangladesh and India had united to register their strong protest over the death of their colleague in that factory. This protest triggered when on 16 August 2014, the employer didn't allow the Nepalese worker to be taken to hospital in time. It is also reported that another Nepalese worker also died on the 4th August for lack of medical assistance in time.

The workers also highlighted their other problems such as low wages, no healthcare facilities, poor working condition. The workers demands included a salary hike, call for negotiation with the management and immediate intervention by the Nepalese embassy. The three days' protest ended in victory for the workers. The company agreed to pay compensation of RM10,000 to the dead worker's family, increase the minimum monthly salary from RM 428 to RM 546, provide an ambulance service for emergency use and clinic facilities in factory premises (Libcom.org, 2010).

5. Probe death of Nepali workers of Besgrade Products Sdn.Bhd, January 2014

PSM lodged a police report against plywood company, Besgrade Products Sdn. Bhd after they received complaints from the workers that three workers died after they were denied immediate medical help. The report asked the police to investigate the cause of death of a Nepalese worker on the 11th of January at Jabi, Pokok Sena, Kedah which suspected to be exposed to poison or chemical reaction at the workplace. The workers who were unhappy with the negligence of the employer staged a protest against the employer who denied help when their fellow worker was struggling to survive (Rasiah, 2014). The three deaths in December at Besgrade Products seem to have been well-kept secrets, and no one till today has been held accountable.

Conclusion

As the discussion shows, migrant worker issues have led to new initiatives in Southeast Asia, involving origin and destination countries' trade unions as well as NGOs. It is the transnational sphere of political activism, and it has great significance in shaping the landscape of migrant labour advocacy and in circumventing the tight grip of governments such as Malaysia on social movement and civil society organizations (Piper, 2006: 376).

There are many challenges in organizing the migrant workers. Some common challenges are like language barriers, weak trade unions and as well as oppressive laws against migrant workers in Malaysia. More challenges are also awaiting us especially on the undocumented migrant workers that have been major concerns in Malaysia. Some of the factors that contribute to the undocumented inflow are the geographical, historical and cultural factors that increase Malaysia's propensity to absorb migrants, the role of social networks, and the immigration 'industry' comprising illegal and legal recruiters and support services, insufficient State institutional capacity to check the inflow, and alleged

malpractices in law enforcement (Pillai, 1998). Ultimately state policy that makes the difference between a documented and an undocumented migrant.

Piper (2006: 376-77) has nicely put in perspective on the challenges of organizing migrant workers, but she also stays optimist towards changes:

> 'In addition to the limited political space given to labour and rights activism nationally, other obstacles to organizing migrant workers pertain to the conditional connection between those workers' temporary work contracts and limited legal/residential rights which make resistance to employers' violation of labour rights a highly risky task. An additional factor is the concentration of migrant labour into specific sectors which are difficult to organize, aggravated by the gender-segregated nature of the labour market whereby migrant women typically work in sectors that have not been part of trade union's purview. In Malaysia, trade unions are more independent, but membership by local and migrant workers is obstructed by employers' widespread practice of laying them off upon joining a union. In addition, many migrants are undocumented, which poses a further challenge to political organizing. This constitutes a gross violation of their freedom of association and deserves more exposure and addressing the ILO. Despite this bleak picture in Malaysia, it seems apparent that the plight of migrant workers is taking forward the labour movement. By involving other civil society groups, e.g., national lawyers associations and major international human rights NGOs, migrant worker activism could push the labour movement in this region to become a key player in fighting for freedom of association and in addressing gross violations of workers' rights'.

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PART II

Breaking Boundaries: Alliance Building and Collaborative Initiatives

CHAPTER TWELVE

Crushed but Revived: Emergence of the Maruti Suzuki Workers Struggle as a Symbol of New Labour Movement in India

by SURENDRA PRATAP

This chapter discusses the emergent of a new labour movement in India, illustrated by the persistent struggle of the Maruti Suzuki workers since early 2000. The Maruti Suzuki workers struggle subsequently gained an extensive support and solidarity from various political groups and social movements nationally and internationally. The chapter describes the overview of the struggle, including the context, background, and latest development. It argues that the Maruti Suzuki workers struggle has brought new dimensions in the development of labour movement in India, especially the understanding of the significance of national and international solidarity actions in labour struggles in the globalized economy.

The Context

The phase of globalization and liberalization came as an all-round attack on the working class in India in the form of an aggressive drive for privatization, combined with large-scale downsizing, retrenchments and informalization of the workforce. In this phase, the labour movement was largely forced to go on the defensive and was largely defeated, and in the process also disintegrated. We can say that the historic defeat of the Maruti Suzuki struggle in 2000-2001 largely symbolised the culmination of this phase.[1] The scenario of labour relations that

1 This was such a defeat that the Maruti Suzuki union was completely removed and deregistered, a large majority of permanent workers were retrenched by way of terminations and forced voluntary retirement, and they were replaced by the contract workers who then formed the

we observed largely after 2000 was completely different from the earlier phase. The majority of industries were effectively de-unionised, a huge majority of the workforce across industries was informalized, the informal workers formed 70-90 per cent of the workforce in various industries, large-scale violations of labour laws became the rule of the game, labour rights of the informal workers as well as permanent workers were openly violated and only unionised permanent workers were able to claim some of their legal rights. The situation was such that even the minimum wages were not paid to a large section of workers, and informal workers were not provided with any proof of employment and so they were unable to even make a complaint against the violation of their rights. Moreover, whether formal or informal, workers who dared to raise their voice were thrown out of their job without due legal process, and they were unable to effectively challenge this because, on the one hand there was no hope they would get justice, and on the other hand, the legal process took 5-10 years to deliver justice to them, and this created a survival crisis for them.

The gravity of the situation was reflected in observations made by the division Bench of Justice G S Singhvi and Justice A K Ganguly in their two separate orders, wherein they cautioned the judges of the Supreme Court and Constitutional Courts that dangerous consequences would visit the nation if the constitutional imperatives were diluted to promote the so-called trend of globalization. Justice Singhvi observed how he had noticed a visible shift generally in the courts' approach in dealing with cases involving the interpretation of social welfare legislation like the Industrial Disputes Act. Justice Singhvi said in his order, 'the attractive mantras of globalization and liberalization are fast becoming the *raison d'etre* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers' (Rajgopal, 2010). Justice Singhvi said that a large number of cases ended up with the workers being denied any relief from judges who readily accept the justification employers give about such illegal retrenchments (Rajgopal, 2010).

On the other hand, in the phase of liberalization, the state in collaboration with corporate capital aggressively initiated the process of labour reforms. The Trade Union Act had already been amended in 2002 and the number of members required to form a trade union was changed from 7 members to 10 per cent or 100 members, which made formation of trade unions very difficult. An analysis of the proposals of the labour reforms made/achieved by central government or state governments appear to achieve the following aspects: (1) Job security may

huge majority of the workforce.

apply to industries with 300 or more workers; (2) Standing Orders providing details of standards of working conditions may apply to units with 100 or more workers; (3) the Factories Act with mandatory provisions of occupational health and safety may apply to units with 40 or more workers; (4) the relaxation in the Apprentice Act to promote engaging apprentices in larger proportions, allowing women to work night shifts and drastically increasing the permissible limit of working hours; (5) not allowing outsiders (other than workers of that unit) to be members of trade union and increasing the period of compulsory notice for strikes, reducing the cost to employers by making provisions for government paying employer's contribution to provident fund in case of new workers for three years, and also the government paying full or part of the stipend for apprentices.

The three aspects of these labour law reforms are very clear: the restructuring of laws are according to emerging structure of industrial value chains wherein there are few larger industrial units at the top, and majority of second tier factories working for the brands are within the range of less than 300 workers, and at the bottom there are informal units with less than 40 workers (but always showing less than 10 workers) and then there are home-based workers. The Child Labour Act was amended and child labour is allowed in home-based work. In units with less than 40 workers, the industrial relations may be completely informalized. The units with 40-299 workers may be allowed to freely hire and fire the workers. In many states like Maharashtra, Madhya Pradesh, Gujarat and Rajashthan, the Factories Act and the Industrial Disputes Act has already been amended in line with the proposed labour reforms by central government. In other states, some laws are amended in bits and pieces, like the Contract Labour Act allowing contract labour in some core activities like in Andhra Pradesh, and allowing women to work night shifts like in Karnataka.

Workers' Response

The central trade unions compelled by the above aggressive moves of the state and with a realization of their drastically minimised political power, came to a common platform with a common agenda, and in challenging the above aggressive reform moves, called a series of nationwide strikes, almost one every two years, with the last one in September 2016. The demand charter of general strikes included:

1. Urgent measures to contain price rises through universalization of the public distribution system, and banning speculative trade on the commodity market;

2. Concrete measures for employment generation;
3. Strict enforcement of all labour laws and stringent sanctions for violations;
4. Universal social security covers for all workers;
5. Minimum wages of not less than Rs 18,000 per month;
6. Assured pension of not less than Rs 3,000 per month for the entire working population;
7. Cease disinvestment of central and state public sector undertakings;
8. Cease contract work (dangerous work) in perennial work and equal wages for same work;
9. Removal of all ceilings on payment and eligibility of bonus, provident fund, and increase the quantum of gratuity;
10. Compulsory registration of unions within a period of 45 days and immediate ratification of ILO conventions C87 and C98;
11. Cease labour law amendments; and
12. Cease FDI in railways, insurance and defence.

On the other hand, large-scale violation of labour laws without any challenge from the state machinery caused the workers to realise that only by unionizing themselves could they force employers to respect their rights. Permanent workers were a very small minority of the workforce across industries but, given the circumstances and the legal complications, they were the only section of workforce able to form a trade union. However, they were very much aware that unionizing the informal workers or at least building solidarity between formal and informal workers was a precondition for building a successful struggle. It is against this background that a wave of labour movements emerged particularly in industries where the nature of operations compelled the employers to maintain a section of permanent workers, and particularly in comparatively larger units where permanent workers were in significant numbers.

The wave of these movements was more concentrated in the automobile industry. We can say that the Honda workers struggle in the state of Haryana in 2005 symbolises the beginning of this phase. Almost all these struggles emerged on the issue of the formation of trade unions and for their recognition for collective bargaining. In almost all of these struggles, permanent workers took the lead and successfully attempted to form unity between permanent and contract workers. They also raised issues for contract workers, such as equal wages for equal work, and the regulation of contract workers. There were varying degrees of unity between permanent and contract workers, and varying degrees

of focus on the issues of contract workers in different struggles, but this aspect was reflected as a general feature of all the struggles.

Another important characteristic of these struggles was that almost all of them emerged from below, initiated by workers themselves, independent from any major established trade unions. However, in the later phase, particularly when faced with a prolonged phase of repression, many struggles became affiliated with central trade unions. It was also a common feature that in almost all these struggles, workers and trade union leaders faced heavy repression and victimization that led to further radicalization of their movements. In a number of cases, the workers finally won in terms that they were able to form their trade unions and were also able to initiate the process of collective bargaining, however in many cases the length of struggles were so prolonged and the victimization was so acute that they lost the battle, and the conditions deteriorated further. In most of the cases where they were able to form trade unions and initiate the process of collective bargaining, the major issues were focused on compliance with labour rights, mainly related to wages and working conditions.

These struggles emerged in all major section of the automobile industry in India: Pune-Chakan region (Maharashtra), National Capital Region (NCR) of Delhi, Chennai- Bangalore region of Tamil Nadu and Karnataka, Udhamsingh Nagar-Haridwar region of Uttarakhand, and Maharashtra-Gujarat region. These struggles included, the Honda workers struggle in 2005 in Gurgaon of NCR, the Hyundai workers struggle in 2007-11 in Tamil Nadu, the MRF workers struggle in 2006-09 in Tamil Nadu, the Graziano workers struggle in 2007-08 in Noida of NCR, the Pricol workers struggle in 2009 in Tamil Nadu (2009), the Rico Auto and Sunbeam Workers struggle in 2009 in Gurgaon of NCR, the General Motor workers struggle in 2011 in Gujarat, workers struggles at Satyam Auto and Rockman Industries in 2012 in Uttarakhand, the Bajaj Auto workers struggle 2013 in Maharashtra, the Ford workers struggle in 2011 in Tamil Nadu, and the Maruti Suzuki workers struggle in Gurgaon at NCR continuing since 2011 etc.

There were also some cases where unions were formed and recognized years before, but management denied or delayed the collective bargaining for new wage revision agreements or failed to comply with collective bargaining agreements. These struggles included the Mahindra workers struggle in 2009 in Maharashtra, and the HMSI workers struggle in 2009 in Gurgaon at NCR in Delhi, as well as in Tamil Nadu and the Toyota Kirloskar (TKM) workers struggle in 2014 in Karnataka etc. It is against this background that we can understand the significance of the Maruti Suzuki workers struggle.

Background of the Maruti Suzuki workers struggle[2]

Maruti Suzuki is notorious for systematically crushing a very strong trade union in the year 2000 in its first plant at Gurgaon. The union was literally wiped out. All the union leaders and also the strong supporters were thrown out and the union was derecognized and deregistered, and a new union was registered with active support of the management. This was one of the worst defeats of the labour movement, and the impact was such that the labour movement in the Gurgaon industrial belt took 4-5 years to recover. Its voice came back with the great struggle of Honda workers in 2005, and this coming back was with such a force that it was able to awaken and unify the majority of auto workers in the Gurgaon region. Right from 2005, there were a chain of strikes and rarely did a year pass without a major struggle that received attention from all over the country. As far as the voice of the Maruti Suzuki workers is concerned, it was heard only after a decade, not in the same plant but in the new plant at Maruti Suzuki India Limited (MSIL) that was established later in the adjacent area of the Manesar region in the state of Haryana. The MSIL workers struggle lasted for more than two years (and still continues) and actually emerged as the symbol of the workers struggle in the new phase.

After completely suppressing the workers and decisively informalizing the workforce at the Maruti-Suzuki plant in Gurgaon in 2000-2001, Suzuki soon expanded its investments in the region with another car manufacturing facility, Maruti Suzuki India Limited (MSIL), a R&D facility, Suzuki Casting, Suzuki Power train, and Suzuki Motorcycle were established in Manesar. In all these factories, the temporary workers (contract/ casuals/ apprentices/ trainees) formed the majority of the workforce.

The Struggle to Form an Independent Union

From the very beginning, the Maruti Suzuki management tried to float a branch of the same yellow trade union that was floated in the Gurgaon main plant in 2000-2001, and in all the plants in Manesar including MSIL. However, after a few years MSIL workers started their efforts to form an independent trade union and filed the application for registration with the labour department on June 3, 2011. The very next day, on June 4, 2011, the management started compelling all workers to sign on a plain sheet of paper and threatened them against any attempt

2 The accounts of the Maruti Suzuki workers struggle are based on Pratap 2011a and Pratap 2011b, personal observations, and various newspaper reports, including Gurgaon Workers News: Workers News from the Special Exploitation Zone: https://gurgaonworkersnews.wordpress.com; Maruti Suzuki Workers Union (MSWU): https://marutisuzukiworkersunion.wordpress.com; Sanhati: http://sanhati.com.

to form an independent trade union. When workers opposed and refused to sign on the plain sheet of paper, some workers were beaten. Upon seeing this, second-shift workers entering in the factory became agitated. These workers, both regular and contract, started protesting. Then, after a quick meeting they decided to stop the work. Almost all of about 3.500 workers at MSIL went on strike on June 4, 2011. The workers decided to remain inside the factory day and night, and therefore in a way they occupied the factory. Casual workers engaged in loading-unloading section also joined the strike and demanded the same wage rate as the truck drivers. The same day, the management terminated the services of all 11 workers who were elected as executive members of the newly formed union. Workers occupied the factory, about 2.700 were inside the factory without having a bath, and in the same cloths for many days. Two of them fell ill and when their condition became serious they were hospitalised. Gates were closed and no workers, friends or relatives were allowed to meet the workers. The only interaction with the workers occurred during the supply of food, and only from the two sides of the closed gates.

The management's open position, well publicised in the media, was not to allow any independent trade union in the company, and that the workers had to accept the already existing trade union. It also went to the extent of declaring the date of election of the existing trade union, and suggested to workers that they participate in the election, and if they wished they could change the leadership. The attitude of the labour department was also not favourable to workers, and it declared the strike as illegal, and referred the matter to the labour court to decide two issues: whether the strike was legal or illegal; and whether the termination action was legally justified or not.

The trade unions of Gurgaon formed a joint committee in support of the MSIL workers struggle. Thousands of Gurgaon auto workers in the leadership of this joint committee organized a *Satyagrah* (sit-in protest and demonstration) in front of the MSIL gate on June 9, 2011. The police disrupted the workers sit-in protest and removed their tents, but it was not able to stop the demonstration. The trade union leaders gave an ultimatum for a two-hour tool-down on June 14, 2011 in solidarity of the MSIL workers struggle if victimization of workers was not stopped. The occupation ended with the management offering only a 'faked' recognition of the union as part of a 'company committee', while penalizing the workers with wage deductions of two days wages per day of strike. This was how the 13-day strike ended, but workers' demands were not met and victimization continued.

At the end of June 2011, on the one hand, the labour department rejected the application for union registration for formal reasons, and on the other hand, the

company started hiring new contract/casual workers for assembly line positions from various IITs. Moreover, in the mean time they fenced off the grassy and open areas inside the premises, which served as assembly places for workers during the occupation. Now it was clear that the management was preparing for something big against the workers and actually, the above-mentioned settlement was only to buy time. On July 28, 2011 police arrived and took four workers from their workplaces based on the allegation by management that they were engaged in incidences of violence against superiors. The workers had no other option but to start a protest. The management also stopped the buses for the B-shift and stopped entry of B-shift workers. A-shift workers refused to leave and were inside the factory. Finally, management was unable to do anything against workers and agreed to let the B-shift start working. In July-August 2011, four workers were suspended and around 40 contract workers were dismissed.

On the night of August 28, 2011 suddenly around 400 riot police entered the factory and camped there. On August 29, 2011 the company locked its gates, erected a metal barrier around the entrance of the plant and demanded that each worker sign a 'good conduct bond' (no go- slows, no sabotage, no singing during work, shave regularly etc.). Initially about 20 workers signed the bond but soon workers collectively decided not to sign, and started a protest demonstration at the factory gate. On the other hand, protected by riot police, the management started hiring new skilled workers on a temporary basis. Victimization reached its heights. The total number of workers subjected to disciplinary actions reached 62, including the dismissal of 15, suspension of 29 regular workers, and termination of 18 trainees.

It is also interesting to note that during the same period, on September 12, 2011, around 1.200 contract workers at the neighbouring Munjal Showa factory went on a wildcat strike (it was believed to be a consequence of the MSIL unrest), which affected the production at Hero Honda plants due to a lack of shock absorbers that are supplied by Munjal Showa. On the other hand, on 14th of September, several thousand workers at Suzuki Powertrain, Suzuki Castings and Suzuki Motorcycles located in the same region of Manesar also went on strike demanding a wage increase and regulation of casual/contract workers, along with a demand for solidarity to end the 'good conduct bond' and lock-out at MSIL, and the withdrawal of the suspensions of MSIL workers. With these strikes, the production at the main plant of Maruti Suzuki at Gurgaon was also almost stopped for lack of parts. Therefore the workers' unrest now had a wider impact in the region. On 16th of September the HMS union at Suzuki Powertrain and Suzuki Castings called off the strike after management considered some of the demands. But they extended their continuing solidarity with MSIL workers.

Trade unions in the Gurgaon region, university students, civil society groups and the international trade union movement came in their support. The International Metal Workers' Federation (IMF) and its affiliate IMF Japan Council together with Confederation of Japan Automobile Workers' Unions (JAW) extended solidarity to the struggle and called on the Maruti Suzuki management to negotiate with the workers in good faith.

Finally, on September 30, 2011 a settlement was reached between the management and workers in the presence of the Minister for Labour, Haryana Government, and Labour Department officials under the Section 12 (3) of the Industrial Disputes Act 1947. In this settlement it was agreed that the workers who had been dismissed would be reinstated and an impartial inquiry would be initiated against those placed under suspension, trainees who had been terminated would be reinstated, on the principle of 'no work, no pay', no worker would be eligible for wages from August 29 until the day of reporting for duty, a penalty of 'deduction of wage for one day' would be imposed upon them, all workers would sign the revised good-conduct bond and resume duties with effect from October 3, and management agreed not to indulge in any acts of vindictiveness against workers. The workers had to sign the revised good-conduct bond, and management re-employed the 18 trainees and converted 44 terminations into suspensions. On the other hand, in the spirit of solidarity, MSIL workers decided to contribute a part of their salaries every month to meet the shortfall of wages of the 44 suspended workers.

However, on 3rd of October 2011, management allowed only permanent workers to enter the factory, and refused to take back about 1,200 temporary workers who also had taken part in the strike and protest demonstrations. Management also shifted a lot of permanent workers from their departments and production lines. Between 3rd and 7th of October, around 100 contract workers were compelled to take their dues and leave the factory. It was against this background that MSIL workers again went on strike and occupied the factory for a second time on 7th of October. This time the occupation and strike was only on the issue of contract workers. The force of this strike was many times stronger than the earlier strike because there were simultaneous strike and occupation of factory by workers in Suzuki Powertrain, Suzuki Castings and Suzuki Motorcycles. The workers demanded that management re-employ all temporary workers in all the factories of Suzuki and restart the company bus service. Moreover, more than half of the contract workers who were hired during the lock-out (actually to break the strike) also joined this strike and factory occupation. There were also short solidarity strikes in eight other factories in the industrial area.

After the district elections were over and more police were available, the management and state launched its final attack on workers. On 13th of October 2011, a huge battalion of police forcefully evicted the workers' make-shift kitchen in the industrial area, which provided food for around 4000 workers occupying the above factories. Around 2,000 police entered the MSIL plant, shut down the canteen, the water supply and the toilets. The same night, workers were forcefully removed from the factory and occupation ended at MSIL. The next morning the workers occupying the other Suzuki factories were also forcefully removed and the occupation ended there as well. However, the strikes continued outside the factories.

Thereafter the management and the state adopted another master strategy to remove the union and crush the resistance of workers. It is alleged that the management forced or convinced all the office bearers of the union to take their final settlement and leave the factory, and whatever happened, they all simply disappeared from the scene without meeting and discussing the issue with workers. So the union was again wiped out from the factory. It was against this background the strike ended on October 21st, 2011 and it was said that the management agreed to re-employ 1,200 temporary workers as well as some of the terminated and suspended workers.

It was assumed that the union was wiped out from the factory, but workers soon reorganized themselves and formed a new trade union and filed the application for its registration on November 3rd, 2011. After a long delay, the Labour Department finally registered the union at the end of February 2012. So a new occasion came when around 2,000 MSIL workers gathered to celebrate the registration of their new union, the Maruti Suzuki Workers' Union (MSWU) in March 2012. The workers of Suzuki Power Train and Suzuki Bikes in the same region also joined the celebration and that gave an indication of the future rounds of struggle in Suzuki.

Thereafter the union formally presented a charter of demand before the management. The main demands included regulation of contract workers and an end to the practice of hiring contract labour. Other demands included an increase in salary, better medical facilities, equal wages and a bus service for contract workers until the contract system was ended, relievers, leaves, 15 minutes of rest-time from the company's 8 hours etc. Management did not accept any of the demands and was not ready to negotiate with the union on the issue of contract workers.

In MSIL it was a practice that the company bus reached the factory 30 minutes earlier than the official duty time and so the workers started their work 30 minutes earlier, and this work was never paid. On 18 July 2012, the union

decided not to start the day before the official duty time, even if bus arrived 30 minutes earlier. During the first tea break at 8.30 a.m., allegedly a supervisor insulted a worker belonging to scheduled caste (dalit) by using abusive language and making castist remarks, and then the worker was also suspended on the complaint of that supervisor. The union demanded to revoke the suspension. But rather than accepting the demand of the union, the management called police and 40-50 bouncers, who allegedly started beating up union members. The workers outnumbered the bouncers, so they also replied in the same language and started beating up bouncers and management staff. The police were allegedly silent observers. In the meantime, there was a fire mishap and somehow the manager, Avanish Kumar, died the same day. There were conflicting explanations of workers and management about the incident.

Thereafter, mass arrests of workers started. The third-shift workers arrived for work that evening and the police arrested many of them–even though they were not there during the incident. This was followed by a great hunt to arrest the workers. The union office bearers went to the police station and surrendered but the police showed that they were nabbed from various corners of Haryana and Rajasthan. A total of 148 workers were sent to jail. Many were hiding for a long time to escape arrest. Workers received termination letters—no notice, no enquiries. A total of 500 permanent workers and 1,800 contract workers were fired. On the other hand, hiring of new workers started the very next day after of the incident and the production in the factory again started on 21st August. So this is how they achieved their two goals – crush the union, and get rid of a lot of workers who were infected with the Union Virus.

Crushed But Revived With a New Social Power

This was a phase of serious crisis for the MSIL workers struggle. After the incident the whole environment turned against the workers. The management, the state machinery, the entire media and local politicians propagated a violent image of workers and created a completely anti-worker atmosphere. No one was ready to support the workers. The central trade unions that were part of joint trade union council and were directly and indirectly helping the movement also went on the back foot and for a long time did not openly support the workers. Because of this the joint trade union council also went on the back foot. However, for the workers it was a life and death struggle and they did not accept defeat. There were various smaller labour groups and various other social forces including students supporting the MSIL workers struggle from the beginning, and it is they who openly came in support of the struggle. The families of the workers also joined the struggle to support the workers.

They worked with MSIL workers and started mobilizing support for the MSIL workers' struggle. The majority of workers were from the surrounding regions of the same state and therefore they also successfully mobilized the rural population in support of the struggle.

Within a month the MSIL workers struggle remerged with new social power. A new committee called the Maruti Suzuki Workers' Union (MSWU) was formed by workers who escaped arrest and they were leading the struggle. Demonstrations were organized in various parts of the state of Haryana like Rohatak, Kaithal, Faridabad, Kurukshetra, Rewari, and Chadigarh etc. Brutal repression was unleashed on workers' demonstration on 19th May in Kaithal, and 10 demonstrators including some activists and three women were sent to jail. But workers continued their struggle. A series of demonstrations were also organized in New Delhi. Their demands included the release of all workers from jail and reinstatement of workers who were thrown out of their jobs. Gradually the joint trade union council and central trade unions in the region also re-joined the struggle. However, in this new phase, the strategies of struggle were quite different from traditional trade unionism and also the struggle was more closely associated with various smaller labour groups and social forces than the joint trade union council. Therefore, there also developed some differences between the central trade unions on the one hand and other labour groups and social forces on the other. The MSWU maintained its independence all through the struggle. Gradually the MSIL workers struggle emerged as a symbol of workers struggle in the country, and in its support demonstrations were organized in many parts of the country.

The union was not ready for any compromise against the interests of workers, and on the other hand the state-corporate collusion was not ready to negotiate on the demands of workers, especially the contract workers. It appeared as if the corporate-state collusion was taking this case as a test case and trying by all means to suppress the movement. This was also reflected in the fact that the workers were denied bail for years and they all spent 2-4 years in Jail. Finally, the Gurgaon Additional Sessions Court delivered the judgment on the case in March 2017. Thirteen union members were sentenced to life imprisonment, four others were sentenced to five years' imprisonment, 14 workers were sentenced to three years' imprisonment, but they already spent four years in prison, and were therefore released. 117 workers were acquitted but had they already spent 2-4 years in Jail. Ever since, the Maruti Suzuki workers' movement entered a new phase. Currently the main focus of the movement is against the sentences handed down to the above 17 workers and for the reinstatement of 2,300 workers, including 546 regular workers who still stand terminated.

The New Phase of the Maruti Suzuki Workers Struggle

On March 18, 2017, after getting the news of the court's verdict against the Maruti Suzuki workers, a widespread discontent was observed in the Gurgaon-Manesar industrial region. On the same evening about 30,000 workers in Gurgaon-Manesar went on a tool-down strike.

The Maruti Suzuki Mazdoor Sangh (MSMS), the joint platform of the Maruti Suzuki factories in the region, gave a call to organize a large-scale protest in Manesar on March 23, 2017, the martyrdom day of freedom heroes Bhagat Singh, Sukhdev and Rajguru. Despite the imposition of Section 144 of the CRPC Act to stop any gathering, thousands of workers from Gurgaon, Manesar and the adjacent industrial region of the state of Rajasthan gathered and organized a rally and procession in the Manesar industrial area. On the same day, an appeal was issued to the labour movement across the country to organize solidarity protest demonstrations on 4-5th April 2017 across the country (the 5th April call was given by central trade unions). An appeal was also issued internationally for organizing solidarity protest demonstrations globally on same days.

The responses of the appeals were amazing and protest demonstrations were organized in most of the industrialised and industrializing states of India, as well as in many countries across the globe, and these solidarity actions were not ritualistic but came as such a live solidarity that is probably exemplary in the phase of liberalization. Protest demonstrations were organized in 30 cities of 15 states including Tamilnadu, Andhra Pradesh, Bihar, Maharashtra, Kerala, West Bengal, Uttar Pradesh, Punjab, Himachal Pradesh, Delhi, along with various cities in the state of Haryana.

At the international level, lively protest demonstrations were organized in France, Brazil, Germany, America, South Korea, South Africa, Japan, England and Pakistan, among others. This national and international solidarity in support of the Maruti Suzuki workers, on the one hand, strengthens the struggle at the ground level, and on the other hand, helps in political and ideological developments in the struggle in terms of understanding the strategic significance of national and international solidarity actions in labour struggles in a globalized economy. This may probably bring new dimensions in the struggle.

The Significance of the Maruti Suzuki Struggle as a Symbol of New Labour Movement

There are many important aspects that gradually evolved from the Maruti Suzuki struggle and these appear crucial to the success of any workers struggle in the era of new international division of labour. These aspects make this

struggle a symbol of the new labour movement. It is not possible here to discuss all these aspects, so we will focus on only few crucial ones.

The international capital's general strategy to exploit global labour is based on transforming the labour into virtually a reserve army of labour, so that sufficient vulnerable labour force is available to work when capital wants it and that too on the lowest possible wages, and it may peacefully go back to starve at home when capital longer wants it. This situation for labour can be created only by: (1) complete informalization of labour that completely de-empowers them legally; (2) socially isolating the labour by various means and primarily by creating an environment wherein labour rights are presented as being against the interest of the nation and its economy, and by prohibiting any outside linkage/support for the workers and their organizations. Engaging informal/contract labour in huge proportions is part of this strategy.

Informalization of workforce also effectively prohibits unionization by way of creating a division among workers. However, if the workers are unionised and are able to build strong solidarity among formal and informal labour, they are empowered to challenge capital and then this advantage for capital is lost to a large extent. This is why the new employers are not ready to accept the trade union at any cost. If the union becomes a reality and they are compelled to accept the union, they do not want the union to be affiliated with any central trade union, they never allow the trade union to take up the issues of contract labour. Also this is one of the reasons why there is an attempt to amend the Trade Union Act to prohibit any outsiders as members of a trade union. All these aspects are reflected in a series of struggles in the auto industry right from 2005. In almost all of these struggles, the major issue was related to the trade union rights. The workers either attempted to form the trade union, or after formation, the trade union demanded recognition for collective bargaining, and in almost all the cases the corporate-state collusion unleashed large-scale victimization and repression against them. It is interesting to note that in most of the cases, particularly in later struggles, the issue of regulating the contract workers was inbuilt in the process of unionization. In most of the struggles the issue of contract workers was raised and contract and regular workers came together in the struggle.

However, the significance of the Maruti Suzuki workers struggle was that it took this wave to a qualitatively higher level. The struggle took this issue to the culmination with its second occupation of the factory only on the issue of contract workers, and by strongly raising the demand to regulate all contract workers and abolish the system of engaging contract workers. Therefore, the level of unity between contract and regular workers was at a qualitatively higher level. It was interesting to see that during the struggle, many contract workers who

were engaged to break the strike also joined the workers' struggle. Moreover, it was the force of the MSIL workers struggle that there were simultaneous factory occupations on the issue of contract workers in other units of Suzuki as well, and also a strike of contract workers in the Munjal Sowa factory in the same area during the same period. In the Maruti Suzuki workers struggle the workers at no stage were ready to compromise on this issue. After being crushed again and again, the workers struggle re-emerged again and again with a new power, and new collectivity between contract and regular workers.

There was also a specific positive factor which helped in building such a greater unity among permanent and contract workers in case of the Maruti Suzuki workers struggle. The majority of workers, both permanent and contract, at Maruti Suzuki were local workers from different districts of the same state. This is not a characteristic feature of automobile industry in the region. Down in the value chain in the 2nd and 3rd tier of the value chain in the automobile industry, the majority of contract workers are migrants, and local workers are in great proportions only in the permanent workforce. This is because of the fact that contract workers are paid only the minimum wage and the workers from the state of Haryana generally do not prefer to work in such conditions, as the poverty in the state is not that widespread. In brand companies, contract workers are paid more than the minimum wage, and therefore local workers form the majority both in the contract workforce as well as the permanent workforce. Moreover, in brand companies, the majority of contract workers as well as permanent workers have ITI qualifications, and a number of them know each other as they have done their technical education at the same ITI institutes. Over and above, many of them may have family ties as well. It is interesting to note that after observing the unity among contract and permanent workers in the struggle, the management took a decision to recruit more workers from ITI of other states from Haryana, to make this unity difficult.

The other great aspect of the Maruti Suzuki workers' struggle is its social dimension. There were positive and negative aspects. The majority of workers are migrants from the same state, i.e., from adjacent districts of Haryana and they live in rented accommodation in surrounding villages. The land of these villages are mostly acquired for industrialization and now their economy depends largely on factory workers either by renting them their houses or from running small shops frequented by the workers. Bouncers (the wrestlers used to suppress the labour movement) also come mainly from these villages. Many times influential villagers collude with management against workers. It was these dynamics that led a joint council conducted by such local villages to largely favour Maruti Suzuki management after the incident in which the general manager of the company

died (Mukherjee, 2012). Actually, the whole environment turned against them; the media and local politicians also largely sided with management, and workers were thrown in isolation. However, by virtue of the same fact that the majority of workers were local, from the same state of Haryana, they were able to mobilize the broader rural population in various districts in their support, and gradually the movement was able to emerge as a social movement in that region. Not only the families of the workers, but also the general rural population also joined the movement in support of workers.

There were many left political groups and social movements actively participating in the Maruti Suzuki workers struggle, along with trade unions and activists from various groups also faced detentions and arrests. The beauty of the Maruti Suzuki workers' struggle was that it did not get attached to particular trade unions or particular left socio-political groups but it was able to bind them together in the struggle. There were conflicts among trade unions and among socio-political groups; and between the forum of central trade unions and the forum of socio-political groups; but they are remained associated with the struggle. One example may be worth mentioning. After the court verdict in March 2017, the Maruti Suzuki Workers Union in association with left socio-political groups National Solidarity action day on April 4, 2017; but the central trade unions declared national solidarity action day on April 5 2017. This was an issue of conflict (lot of dynamics on who, how and why). But this was resolved in the way that strengthened the movement rather than weakening it. This was discussed and finally it was decided to make both days, April 4 and 5, 2017, as the national solidarity action day. On this aspect, learning of the Maruti Suzuki workers struggle is of great significance to the left movement and the trade union movement, where many times sectarian tendencies create detrimental situations for the movement in general.

Lastly, the Marurti Suzuki workers' struggle gradually developed characteristic features of the working class movement, the sole power of which lies in believing and developing great power of working-class solidarity. This struggle was consistently strengthened by working-class solidarity in the region and was also actively involved in building solidarity among trade unions in the region. It gradually learnt the significance of national and international solidarity for the broader success of struggles in the era of new international division of labour. The Marurti Suzuki Workers Union and the trade unions, and left socio-political groups took this movement to various parts of India to build broader solidarity in support of the movement. This was reflected in national and international solidarity actions on April 4 and 5, 2017. But this was not limited to such solidarity actions; many trade unions in various states consistently and actively

supported the movement and also financially helped this struggle. But this is only one part of the story. The other part of the story is not less significant. The Maruti Suzuki Workers Union never abandoned the family of workers who were in jail. The union continuously supported them financially and mobilized a fund for this support. They were never absent in any relevant occasion in the family of those workers, in marriages of sisters of workers in jail, they participated as brothers and gave financial support from the union. Currently they are planning to challenge the lower court verdict against the workers in a higher court, and also planning to mobilize a fund for regular financial support of the workers who received prison sentences.

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CHAPTER THIRTEEN

Alliances of Labour Unions as the Backbone of General Strikes in Indonesia

by ABU MUFAKHIR

Introduction

Hery was just 19 years old when he actively participated in intensive street protests in the heartland of Indonesia's industry in Bekasi, West Java. Like many workers in numerous industrial estates in the country, he was among the unorganized working class. However, he began to engage in activism in 2010. He joined in a series of strikes, factory raids, and toll road blockades between 2011 and 2013, and also took part in the first-ever general strikes in 2012 and 2013 in the country's post-authoritarian period, which involved more than two million and three million workers respectively. Hery was just a contract worker back then, but managed to obtain a permanent status when he took the courageous decision to raid the factory where he worked in mid-2012. During the raid, he and hundreds of his fellow workers pressured management to endorse an agreement to lawfully change their status from contract to regular/permanent. Since then, he has turned up at every labour protest.

For many young workers of Hery's age, actions such as hitting the streets with their motorbikes, blockading toll roads, raiding factories and even occupying the entire industrial estate, are not only about articulating their political aspirations, but also a great escape from factory routines. It is not only about direct action that they successfully take to have their demands met, but beyond that it is to

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reclaim their dignity and wellbeing. In their everyday resistance and its processes, workers like Hery expressed that they gained valuable experience that they could not obtain from the work place.

This chapter discusses the wave of workers' resistance in Indonesia that included the occurrence of factory raids and general strikes between 2011 and 2015. It argues that the workers' resistance that escalated into factory raids and general strikes was possible due to the active involvement of local alliances at the city, district and sub-district levels.

The Rise of Labour Resistance

In the early 1990s, amidst authoritarian Suharto, the Indonesian industrial working class held various waves of strikes on an unexpected scale. The strikes spread to industrial estates around Jakarta, then quickly reached Surabaya in East Java and Medan in North Sumatra (Kammen, 1998). Since the early 1990s, labour protests in factories, were considered to be disturbances, which caused the regime to take various actions to curtail them. The state even took more austere action by arresting, detaining, and even murdering some of leaders of the labour movement. Since the early 1990s, labour unions have situated themselves as an opponent of authoritarianism (see Panimbang and Mufakhir, forthcoming).

However, when Suharto was toppled in 1998, the voice of labour seemed to have disappeared. Labour unions became too busy with themselves. Amidst the situation between a worsening economic crisis and the beginning of freedom of association, new labour unions emerged. What was once a single labour union, a legacy of the New Order, Serikat Pekerja Seluruh Indonesia (SPSI) was gradually abandoned by its members who then established new but relatively small labour unions. In addition to this, many other labour unions outside SPSI emerged. In this situation, labour unions had difficulty building strategic cooperation with other labour unions or between labour unions with other social forces.

Two years later between 2000 and 2001, while the Asian financial crisis was still impacting the Indonesian economy, many labour unions held multiple strikes and rallies. In 2000 there was a series of massive labour rallies of more than 324 industrial actions that involved around 730,000 workers. In 2001, there were at least 357 rallies that involved at least 374,000 workers (see Table 1). Labour actions occurred in several industrial cities in response to the economic crisis which had resulted in mass layoffs, a drop in real wages of 40 per cent – the highest percentage since the early industrialization of the late 1970s. These actions were triggered by the government's plan to revise regulations related to lay-offs and severance pay (Abdullah, 2012).

In the midst of mass retrenchments following the closure of hundreds of companies, the government's plan to allow companies to avoid paying severance pay had made workers furious. This then triggered a series of industrial actions throughout 2001, which then succeeded in pressuring the government to abandon their plan to the draft regulations on severance pay. During this period, the collective actions of workers tended to escalate into a 'riot', such as in Bandung city where the demonstration ended up with a car being set on fire in front of the governor's offices. Some of the union leaders were arrested and others became fugitives. This situation was so much different to what occurred in later years. Industrial actions increased both in terms of frequency as well as the number of workers involved. Most of the protests went peacefully.

In 2006, the intensity of industrial action was increased. During this period, workers demanded an end to the practice of temporary employment. There were at least 234 industrial actions that took place in 2006 which involved more than 280,000 workers (see Table 1). The trigger was the government's plan to revise Law No. 13/2003 on manpower which legalized the use of temporary workers or agency workers in the employment scheme. This labour law reform enraged workers and resulted in various protests. The Labour Defenders Alliance (ABM-Aliansi Buruh Menggugat) was one of the earliest alliances of labour unions established in the post-dictatorship period. The alliance was vital in unifying the workers' response to the labour law reform. Fexibilization and rampant informalization began in 2006 (Tjandraningsih and Nugroho, 2008).

Three years later, a series of industrial actions emerged demanding broader political aspirations, that is, the implementation of a social security program for all citizens. The protests escalated in 2013. However, labour unions were divided into two groups: the first group supported the implementation of the BPJS Bill[1], and the second group rejected the BPJS Bill. The debates were mainly based on the source of funds for the social security program. Those who supported the implementation of the BPJS Bill agreed that the system is contributory (from the membership monthly fee), while others demanded that the social security system should be non-contributory, meaning to be funded by the state. Later in 2010, the first group established the Social Security Action Committee (KAJS-Komite Aksi Jaminan Sosial), while the second established the Pro-Peoples Social Security Coalition (KJSPR-Koalisi Jaminan Sosial Pro-Rakyat). The first group was more resourceful and efficient in their campaigns, thus gradually

1 BPJS stands for Badan Penyelenggara Jaminan Sosial, which literally translates to Social Security Agency, a government body that serves and provides social security programs.

Table 1. Industrial Actions in Indonesia, 1998–2013

YEAR	NUMBER OF INDUSTRIAL ACTIONS	NUMBER OF WORKERS INVOLVED
1998	604	141,495
1999	208	145,000
2000	324	730,000
2001	357	374,858
2002	218	138,667
2003	113	81,649
2004	215	169,000
2005	259	214,252
2006	234	289,584
2007	227	224,500
2008	505	430,000
2009	714	620,335
2010	731	691,320
2011	1,354	763,304
2012	1,050	613,548
2013	1,254	654,000
Total	8,367	6,281,512

Source: LIPS (2015).
Note: *These figures do not include the May Day celebrations and general strikes in 2012 and 2013.

became more popular among the public. The KAJS group was able to maintain the intensity of the workers' protests until their demands were met in 2014.

The most massive workers' mobilizations took place between 2011 and 2013. Excluding the two general strikes in 2012 and 2013, the number of industrial actions during that period was at least 3204 and involved more than 1.8 million workers. If we include the number of workers who participated in the general strikes, there were more than 6.3 million workers who took part in the labour protests. In 2012 and 2013 there were two general strikes that involved more than 4.5 million workers. During this period, there were also strikes in industrial areas and blockades of toll roads. There was also a series of factory raids that took place between May and October of 2012, demanding the elimination of outsourcing and the practice of contract employment in Bekasi industrial estates.

Workers' Challenges to Low Wage Policy

In 2012, there were at least 1,050 industrial actions, mostly demanding wage increases. There were 716 industrial actions or 68 per cent took place during the year (see Table 2). Demands related to wages consisted of two categories. The first category related to remuneration practices, which included unpaid wages, delays in paying wages, workers paid below the minimum wage, etc. Actions in this category were the highest (495 out of 716 wage demands). The second category related to wage policy, such as the minimum wage setting, protests against wage regulation, disputed court verdicts on minimum wage suspension, etc. These demands were stated in 221 actions, or four times higher than the demands related to non-labour policies. Meanwhile, demands for job security were stated in 46 actions, and freedom of association stated 41 times, six of which were related to criminalization of labour union activists.

Table 2. Five Most Frequently Stated Demands in 2012

DEMAND	FREQUENCY
Wage	716
Non-labour Public Policy	48
Job Security	46
Freedom of Association*	41
Social Security	12

Source: LIPS (2015).
Note: *out of these, six protests were related to the case of criminalization of union leaders.

On July 2012, the government issued a regulation on minimum wage determination (Ministry of Manpower Regulation No. 13 of 2012), which increased the number of new components to the existing Decent Life Components (KHL-Komponen Hidup Layak), from 46 to 60.[2] This number actually is still below the number demanded by labour unions (84 – 122 components).[3] The addition was encouraged by a series of labour union actions which demanded an increase in the number of KHL components. Therefore, this could be seen as a political victory for the labour movement.

2 Minister of Manpower Regulation No. 13 of 2012 on Decent Life Components

3 In addition, fourteen components are cheap basic commodities such as shampoo, combs etc. Therefore, the components do not significantly affect the overall minimum wage. In the case of Jakarta Province, for example, if we convert fourteen components into money, in 2013 the cost was only around IDR 46,000.

In 2011 a series of actions began in various industrial cities that demanded an increase in the minimum wage. These actions started to show results in 2012 and 2013. Following the series of actions demanding a minimum wage raise throughout 2011 (September – December), 2012 Tangerang District – one of the oldest export-manufacturing industrial cities, saturated by thousands of garment factories – minimum wage had increased by 34.09 per cent, twice the increase achieved in the previous year. And in Jakarta Province the minimum wage increased by 18.54 per cent. This figure is above the average increase achieved in the previous year.

In 2012, a series of increasingly widespread industrial actions demanding a decent wage occurred in various cities. The result was more amazing increases in the minimum wage in 2013. In Bogor City the minimum wage increased by 70.5 per cent, an unprecedented increase. This was followed by Cilegon City where the minimum wage increased by 64.18 per cent. Then Purwakarta District, a new industrial city which has become increasingly saturated by automotive plants, increased by 61.64 per cent. This was followed by Tangerang City with an increase of 59 per cent. Some other cities also experienced a wage increase above 40 per cent. In 2013 the average minimum wage increase, in 15 industry-intensive regions, reached 48 per cent. With the exception of 1997, 2013 is noted as the year when the highest increase in the minimum wage occurred since the implementation of a minimum wage policy at the end of 1970s.[4]

The minimum wage increases in 2011 and 2012 in many industrial cities happened without an economic crisis as a background. The increase happened because labour unions were able to develop different resistance strategies in demanding an increase in the minimum wage. Labour unions combined formal mechanisms with street politics, once again using the street as a political space to strengthen the fight for increased minimum wages. In doing so, labour unions build cooperation and coordination with other labour unions in different industrial cities.

Labour union leaders in large industrial cities such as Bekasi, Jakarta and Bogor conducted intense communication and coordination. In 2012, labour

4 Throughout the Suharto authoritarianism, the average national minimum wage increase of more than 48 per cent only happened in 1997. At that time, the increase was 232 per cent when Indonesia was on the dawn of an economic crisis. The inflation had rocketed, real wages had dropped drastically, and many factories went bankrupt. Increases in other years only reached 10 to 15 per cent. The average national minimum wage increase post-Suharto (except 2013) never reached 40 per cent. The highest increases were in 2001 and 2003, 33.9 per cent and 26.8 per cent respectively. Both years were in times of economic crisis when real wages dropped around 40 per cent, and there were waves of mass layoffs in many industrial cities.

unions in Jakarta Province and the district and city of Bogor demanded that the minimum wage increase to roughly the figure determined for the minimum wage in the Bekasi district. This figure is a result of the labour movement in Bekasi which has the ability to mobilize the masses, and therefore could demand a higher minimum wage. In this way, labour unions in three regions ignored the formal mechanism that was in place and they even withdrew their representatives on the wage council. The result was that the minimum wage in 2013 in Jakarta Province was the highest of all three, followed by Bogor city and district which is as big as the Bekasi district.

Since its implementation, the city/district and provincial minimum wage policy has broken the resistance, and is now scattered and region-based. During this period there were no cross-region labour unions. The strategy employed in 2012 briefly solved this problem. Labour unions in four regions coordinated with each other and demanded that the wage increase figure should apply to the Bekasi district. This strategy was accompanied by concentrating demonstrations in the Bekasi district, the most important export/manufacturing industrial city which also had the strongest labour movement.

Compared to the repressive and authoritarian Suharto era, when the only available option was legal argument demanding law enforcement, today, there are other options available. Therefore, apart from using legal argument, there are now other alternatives to make demands, some of which violate the law or are beyond the legal system, such as factory raids, blocking toll roads, industrial area blocking, and so on. Hence, when we try to compare between demands, the arguments behind the demands, and the methods of the demands, the most significant development is the methods of the demands which are beyond the legal mechanisms. Meanwhile, most arguments behind the demands are still mostly dominated by a legalistic way of thinking, instead of a political or economic way of thinking.

Generally, the demands are related to working conditions and wider state obligations to workers, whether it is related to labour policy or not. In demands that are related to state policies, political and economic arguments are more dominant than legal arguments. In addition to these categories, there are still other categories. As we can see from the data provided in Table 3, the percentage of miscellaneous category is always higher than 10 per cent. Even in 2009 this category reached 30 per cent. Statistically, a high percentage for the miscellaneous category is not good. However, this also shows the range of demands, which is too wide and also shows that two categories are not sufficient. Labour union demands range from road renovations around the plant, legal processes for paramilitary actions, management replacement, rejecting factory shut down

by government due to permit violations, to international solidarity actions. The types of labour union demands are too diverse, while the statistical categories are way too simple. This is where I must admit the weakness of the statistical method employed here.

The level of action affects the type of demand, or on the contrary, the type of demand affects the level of action. In strike actions, demands are usually related to improvement in working conditions. Meanwhile, on a wider scale, actions are usually conducted in front of government buildings, and mobilized through different alliances, and the demands are addressed to state policies. One interesting thing is that since 2007 to 2008, the demands that were related to state policy increased from 8 per cent to 32 per cent. Although that number dropped to 20 per cent in 2009, it rose again until finally in 2013 it reached the highest percentage, that is 37 per cent, along with the decline in demands for basic rights (see Table 3).

Table 3. Major Grievances/Demands, 2007–2013 (per cent)

Year	Basic rights	Policy change	Other Demands
2007	68	8	24
2008	44	32	24
2009	50	20	30
2010	51	27	22
2011	50	30	20
2012	42	36	22
2013	40	37	23

Source: LIPS (2015)

Factory Raid and the Beginning of General Strikes

The year 2012 was the year of resistance. Thanks to this resistance, the 2013 minimum wage rose sharply and reached an average increase of 48 per cent. That year was the year when the post-Suharto labour movement succeeded in organizing general strikes for the first time ever. During the first three months of the year, there was a surge in the scale and intensity of labour actions, especially those related to minimum wage setting and government's plan to raise the fuel price. For the first time, the plan to raise the fuel price was finally aborted due to strong pressure from workers. In addition, tens of thousands of workers shut down the Nusantara Bonded Zone (Kawasan Berikat Nusantara) in Cakung, North Jakarta; then simultaneously paralysed seven other industrial estates in Cikarang, in the Bekasi district—which supports 46 per cent of Indonesia's non-

oil and gas exports.[5] During this series of actions, a few toll road networks, which are the most important part of the Indonesian economy, were also paralysed for a few hours. In addition, throughout May to November 2012 labour mobilization also took a new form which was often called a 'factory raid'.

A factory raid, or *grebek pabrik*, is a strategy to curtail an employer's infringement of labour laws or to settle disputes. Factory raids were sometimes combined with and included other direct actions by unions to pressure an employer to comply with the law and accept the union's demands for improvements in the workplace. It has reconfigured industrial relations in Bekasi and has also caught the attention of unions in other parts of Indonesia. Despite the fact that the raid has often provided an immediate outcome to a dispute, there has been deep concern about its overuse as a strategy and the social consequences it may have. The factory raid has not always brought the results that the union had expected. Unions, however, have understood the risks involved if such a strategy failed. As such, unions have asserted their social responsibility in their struggle for welfare when they decided to carry out a factory raid (Mufakhir, 2014).

Throughout 2012, at least 552,000 workers were involved in 897 non-strike actions, and 61,000 workers were involved in 243 strike actions. Most demands were categorized as economic, and most were related to wages. The biggest action happened on Java Island (64.90 per cent) with a large number of workers involved (85.87 per cent). Jakarta was the centre of most actions, followed by Bandung and Cimahi, Surabaya and Sidoarjo, Batam, Bekasi and Tangerang-Serang. Jakarta, Bandung and Surabaya are still the locations where the actions were concentrated. The main reason was because these three cities are administrative centres. Actions rejecting national policies were concentrated mostly in Jakarta.

There are at least three specific situations prior to the general strike that need to be highlighted. The first is the radicalization of workers by using the wage issue. Four years before the first general strike in 2012, protests began to increase as a unified response against the low-wage policy. Radicalization in demanding a minimum wage hike occurred by combining the existing formal mechanism with street resistance. In the months when the minimum wage was negotiated (between September and December each year), labour protests took place in many regions. This explains why the three general strikes occurred between October and November. Many different federations of unions were united in alliances, holding joint protests to pressure wage councils all over the country.

5 In 2005, the export potential reached US$ 15.1 billion to 30.560 billion or 46 per cent of national non-oil and gas export, which is US $ 66.428 billion.

Second, there were advances in the methods of direct action in some industrial zones between 2011 and 2012, such as toll roads blockades, the shutdown of industrial zones, factory raids, regional strikes and many others. All of these demonstrations contributed to the intensification of resistance toward the strategies in general strikes. One of the strategies is called 'sweeping.' This tactic became popular in about 2006. Applying this tactic, labour organizers mobilize workers in many factories in various industrial estates, asking them to stop working and to participate in workers' rallies.

There were 72 actions in 2012 using blockade tactics. The decision regarding the location of the action and the use of a blockade tactic are important parts of the strategy. A toll roads blockade could halt the flow of goods to and from industrial estates. From the many options of the locations to perform the blockade action, the unions increasingly take into account the political aspect. By choosing the street as the battle arena, the unions are increasing the level of 'disruption' in order to exert their power later at the negotiating table. The combination of strike action and street blockade also means expanding the battle arena from workplace to the street. Union leaders keep the method of street protests flexible: shutting down an industrial zone, a street blockade, factory raids, mass assemblies, long-marches, and so on. Juliawan (2012) called these kinds of actions a return to street politics. Workers celebrate the street as a public space to voice their demands, which also mocks the street in the New Order, which was sacred, well ordered and full of fear.

Third, since 2009 the number of workers who joined rallies increased rapidly. There were more union alliances at various levels, including local, provincial[6], city, district[7] and also industrial zones.[8] All of these alliances provided a space for unions to cooperate and coordinate, particularly on the common issue of wage increase. Therefore, the general strikes took advantage not only of the situation at a time when workers were radicalized and demanded the minimum wage, but also the experience of local alliances.

General Strikes and their Impacts

The first general strike was successfully held for one day on October 3, 2012. The Indonesia Workers Assembly (MPBI/Majelis Pekerja dan Buruh Indonesia) was the national alliance that organized the strike, demanding the elimination of the

6 Such as FB DKI in Jakarta, Aljabar in West Java and Mabur in Central Java.

7 Such as Buruh Bekasi Bergerak (BBB), Aliansi Rakyat Tangerang Raya (Altar), Gerakan Buruh Semarang (Gerbang).

8 Such as Aliansi Buruh Kawasan Berikat Nusantara (ABK), Forum Komunikasi Kawasan Pulogadung, and Forum Komunikasi Jababeka (FKJ).

outsourcing system, the rejection of the cheap-labour policy and the enactment of social security. According to The Indonesian Trade Union Confederation (KSPI-Konfederasi Serikat Pekerja Indonesia), two million workers joined the strike, while another confederation, KSPSI, claimed there were 4 million workers in the strike. Meanwhile the Employers' Association of Indonesia, or APINDO, stated that only one million workers took part in the general strike. If we use the number of two million, it means that only 4.5 per cent of workers in the formal sector participated in the strike.[9] The strike occurred in 35 cities and districts in 20 provinces across Indonesia, which disrupted production activities in 80 industrial zones with different levels of disruption. The mass media reported all industrial zones in Cikarang and Pulogadung were paralysed, while others were having disturbances. The Government, represented by the Center of Policy and the Industrial Business Climate Study (Pusat Pengkajian Kebijakan dan Iklim Usaha Industri), an organization under the Ministry of Industry, calculated that the estimated loss due to the strike reached IDR 120 trillion (USD 20 billion) (Beritasatu.com, 2012).[10]

The second strike lasted for two days (October 31 to November 1, 2013). The National Coalition of Labour Movements (Koalisi Gerakan Buruh Nasional/ KNGB) was established as a national alliance to organize the strike.[11] Three confederations and 40 federations stated their support for the strike. They demanded that the government increase the minimum wage, eliminate the outsourcing system, and revoke the 2013 Presidential Instruction regarding the minimum wage. About 2-3 million workers participated in the strike, which was 5.3 per cent of the total workers in the formal sector.[12] This number increased compared to the previous strike. The strike took place in more cities and districts, and succeeded in disrupting production activities in more industrial zones.

The third general strike was in 2015, which was initially planned to be a four-day strike from November 24 to 27. However, most unions were able only to mobilize for one or two days. On the third and fourth day of the general strike, in some strategic locations such as key industrial estates in Jakarta, Bekasi, and

9 National Survey of Workforce reported that the number of workers in the formal sector in 2012 was about 44,2 million people.

10 But there is not sufficient explanation of how it was calculated. The government (the chamber of commerce or KADIN) uses a very general assumption that every middle and large factory needs $2 million USD per day to cover their production costs, and there are 10,000 factories in this classification which were impacted by general strikes.

11 At the declaration of the alliance, the members were KSPI, KSN, GSBI and Sekber Buruh. The total number of members increased after the announcement of the strike.

12 National Survey of Workforce reported the total number of workers in the formal sector reached 46.6 million workforces in 2013.

the Jakarta International Seaport, the unions changed their tactics to rallies, assemblies and religious gatherings (*istigotsah*). The locations of the strike were also moved from the central production and distribution activities (factory, industrial zone, warehouse and seaport) to government offices. This indicates a shift from direct action to symbolic action. A general strike for four days indeed requires better preparation, more energy and resources.

During the third general strike, two national alliances were formed, that is KAU-GBI and KPR that had similar campaigns demanding that the government revoke Government Regulation No.78/2015 on the formula for calculating the minimum annual wage increase. The number of workers who joined the strike declined drastically after the first two days of the strike; there were about 500,000 workers or about one per cent of the formal sector.[13] The strike and rally took place in 21 cities and districts, and 54 industrial zones. The industrial loss as a result of the strike was lower compared to the first general strike. The Indonesian Chamber of Commerce (KADIN) claimed the total loss reached IDR 500 million (Aminah, 2015). The protest actions, since its pre-conditioned actions until the day of general strike took place, experienced a more repressive response. At least 42 workers who participated in the protest were arrested and attacked by riot police.

In general, there are two analyses on the impact of these general strikes. First is the analysis that exaggerates the impact, as if the strikes were revolutionary events that did not consider internal limitations or the negative aspects. Second is the analysis that perceives the strikes in an overly-cynical manner, as if the there was no contribution or achievement of the three strikes just because they could not realize their demands. The following is an attempt to analyse the impact of the strikes.

There are at least two things to be considered when assessing the impact of strikes. The first is the internal capacity of the union to mobilize workers, in terms of numbers and duration. The second is the compatibility of the strategy in articulating the demands, the responsibility for decision-making regarding the demands, and the model of mass mobilization. For the three general strikes, mass mobilization was limited only to workers in formal sector. The largest mass mobilization occurred during the second strike but it only managed to mobilize 5.4 per cent of workers. This percentage is lower compared to the union membership (around 11 per cent). Not all unionized workers participated in the strikes.

13 Statistic Indonesia reported the total number of workers in the formal sector in 2015 was 47.5 million workers.

Beside the number of workers involved, the next thing to be considered is the duration of mass mobilization and the ability to stop production. The average duration for the three strikes was two days. Considering the geographic scale of the strikes, the largest was the second two-day strike. The first strike, from the beginning, was planned to be a one-day strike. At the third strike, even though it was planned to last four days, only lasted for one day due to lack of preparation and a more repressive response from the state and capital, even though it occurred on a larger scale. This strike mostly lasted for only one shift, which means it was a one-day strike that lasted for only 8 hours, while the other strikes lasted for 16 hours, so the production process kept running. The loss of 16 hours of production during the two-day strikes was certainly easier for the companies to manage. They could intensify the working hours in the days that followed, reduce days off and day leave for workers who participated in the strike, therefore compensating for the loss of working hours.

It is worth considering the effectiveness of the strategy in terms of articulating the demands, the decision making to grant the demands, and the model of mass mobilization. The first and second strike had three primary demands, which were the elimination of outsourcing, a minimum wage increase, and the implementation of social security. These three demands were very different in terms of formal mechanisms, the relevant regulations, and who was responsible for the decision (to grant the demands). The authority that decided the minimum wage demand was different to the authority that made the decision regarding the outsourcing system. For outsourcing system, it was the decision of the central government, while the decision to increase the minimum wage was the responsibility of regional government at city, district and provincial levels. The decision to increase the minimum wage involved a formal mechanism; it required a recommendation from the wage council to the mayor or the head of the district, which would then be approved by the governor. However, by staging a general strike as the method, the model of mass mobilization and the responsibility for decision making becomes generalized by targeting central government. Thus, the general strike had little influence in the decision of a minimum wage increase in every region. This was different from the wage campaigns and protests in the period of 2011 and 2012, when mass pressure was more effective by applying strategies such as street blockades, sit-ins at the Ministry of Manpower office, and regional strikes, which took place continuously. Taking a one or two-day general strike definitely placed insufficient pressure on eliminating the outsourcing system. Prior to the first strike, the state decided to negotiate, which resulted in issuing Ministry Regulation No 19/2012, which restricted the type of work permitted by outsourced workers.

At the third strike, the demand was more specific, that is the annulment of Government Regulation No 78/2015 on the formula for fixing the annual minimum wage increase, however, the state was more persistent. When the first and the second general strikes were held in 2012 and 2013, government officials at ministry level and the President summoned the national leaders of the labour alliance. However, at the third general strike the government was not bothered by the pressure from the union, which was seen as much less powerful. In addition, the government was well prepared to face the general strike.

Nonetheless, it is insufficient to assess the impact of the general strike by looking only at concrete achievements and whether or not the demands were realized. To make an assessment only in this context is oversimplifying the problem and the strike itself. Regardless of the extent to which the state was willing to negotiate, all three general strikes were an accomplishment for the labour movement. These strikes widely impacted the shared experiences of workers in collective actions, although each action had different levels of worker participation. Most of the workers joined the strike involuntarily because their workplaces became the target of 'sweeping' tactics. Nevertheless, this type of involvement placed the workers in a position of collective action and resistance. A general strike is not only crucial as an experience in building collective work of inter-labour unions, but also at a more personal level, general strikes have become a way to develop working class consciousness. The general strike, at the very least, was successful in voicing workers' grievances and transforming it into collective action.

Some Achievements of the Labour Protests

There have been some notable achievements. Firstly, between 2011 and 2013, there were at least three major campaigns that resulted in demands being adopted into government regulations, including workers' demands to take more wage components into account, following which the government increased minimum wages, as the list of wage components (around 60 items) was adopted into the Minister of Manpower's decree in 2012. Secondly, more restrictions on irregular or agency work have been recommended by the judiciary. A group of workers submitted a Judicial Review to the Constitutional Court to question the scope of employment and limitations on the recruitment of outsourced (agency) workers. The judicial review was finally accepted in 2012, and the Court suggested that the government issue stricter regulations to discourage employers from recruiting contract and agency workers. As a result, the government was forced to issue the Minister of Manpower's Decree No. 19/2012. Thirdly, the enactment of a social security policy was legislated. Despite controversy and debate around it

within the labour movement—as this policy is based on monetary contributions and not universal free healthcare (hence it works like a private insurance)—this policy was successfully enacted to cover all citizens with health insurance, which was previously restricted to formal workers, civil servants, and members of the military.

Indonesian workers have shown their ability to play a greater role to enforce policy changes, and develop a capacity to exert their power in broader political struggles. Workers and unions combined different legal and non-legal strategies during their struggles, including direct action, in order to achieve their goals. They have been able to put several employers into jail for violations such as union busting, using the existing legal mechanism rather than following the Corporate Social Responsibility-sponsored protocols of Freedom of Association promoted by international brands and corporations, including Adidas.

The Seeds of Unity and the Key Role of Labour Union Alliances at Grassroots Level

Among the conditions for the general strikes were several prior developments. First, there was the collective memory of strikes and mobilizations that occurred between 2009 and mid-2012. The experience of resistance in this period introduced different kinds of working class action to Indonesian workers, including radical and direct actions such as factory raids and blockades of toll roads. Second, there were a growing number of radicalized workers voicing their response, especially to the unfavourable minimum-wages policy. Cross-sector alliances of labour unions were formed to address this policy, especially at the district and provincial levels where most workers and union leaders shared common interests in a living wage. In many areas, the alliances of unions at the local level preceded the plan to hold a general strike.

Our data reveals that labour protests organized by alliances, rather than by individual unions, increased rapidly between 2007 and 2013, from only 4.5 per cent in 2007 to roughly 60 per cent from 2011-2013 (see Table 4). This process of coalition formation was driven by common interests to increase minimum wages and to end the low-wage policy. Unlike at national level, these local alliances at city and district level provided opportunity for exchange and debate, particularly on strategies to achieve a decent wage. The exchanges provided a greater avenue to learn and to build solidarity.

Every general strike had a different national alliance but it had virtually the same local alliance structure. The formation and de-formation of national alliances only happened at the national level, however, it did not apply at the

Table 4. Protests by Individual Labour Unions and Alliances in Indonesia, 2007–2013 (per cent)

	YEAR						
INDUSTRIAL ACTION	2007	2008	2009	2010	2011	2012	2013
Individual labour union	95.5	92	57	60	38	40	43
Alliance of labour unions	4.5	8	43	40	62	60	57

Source: LIPS (2015).

local level. National alliances were formed before the general strike took place while local alliances were already established long before. The general strikes required a structure of coalition that could combine two aspects: the need to coordinate many different unions and the need to coordinate actions across regions. The strikes were organized by building union collaboration across regions at two levels, national and local level (at province-district and city-industrial zone level). This type of structure enabled many unions to reach agreements in different regions.

National level alliances functioned as an umbrella organization and as a political organization. As an umbrella organization, the roles of national alliances were to formulate demands, negotiating agreements across unions at national level and mobilizing resources from the outside of unions. As a political organization, its roles were confronting the central government, the rallying campaign and building public opinion through mass media to mobilize general support for the strike. The local alliances functioned mainly for practical matters; they provided opportunity for daily coordination of unions in the period of the general strike as well as negotiating ideas and for allocating technical responsibilities.[14]

Certainly, there were differences in position between alliances. In some cases, not all members of the alliances supported the strike. In this situation,

14 The author was present at the formation meeting of Mabur Central Java, a local alliance at provincial level. The meeting took place ten days before the second general strike in 2013. Unions in Central Java and four local alliances, which were already established before, attended the meeting. All unions shared their ideas about the strike, from general ideas on the strike to preparations and an action plan to mobilize a successful general strike, from deciding the date of the strike and type of pre-condition actions to deciding a location for joint-actions. This process also occurred in Jakarta at the third strike. The difference was, of three alliances in Jakarta, only two alliances agreed to support the third strike. Unions that joined the alliances of ABK and BJB conducted meetings before and at the time of the strike, while FB DKI could not reach an agreement when one of its members voted against a general strike. This situation weakened the third strike compared to the first and second strike.

there were two possibilities; first, the alliance still facilitated organizing the strike, and second, as most members supported the strike the alliance still existed without involving the members who disagreed. There were also situations when the union member of the alliance at the local level supported the strike while at a national level the union was against the strike.

There were conflicts between the members of alliances and also within the national and regional structure regarding the general strike. When leaders at national level were against the strike, the structure at regional level decided to support the strike and joined a local alliance. This difference in position received no penalty from leaders at national level. This happened at the first and second strike. On the third strike, the situation was the opposite. While the national leader agreed to organize the strike and joined the national alliance, some leaders at regional level were against the strike and obstructed their members from participating in the strike. The term used for this kind of action was insubordination.

The first general strike was organized by MPBI, a national alliance comprised of three major confederations (KSPI, KSPSI-Andi Gani and KSBSI-Mudofir). Not long after the strike, the alliance was dissolved. Two of its previous members, KSPSI and KSBSI did not support the second general strike. The second general strike was organized by KNGB (National Consolidation of Labour Movement/ Konsolidasi Nasional Gerakan Buruh). It was declared on September 30, 2013 in Jakarta. The meeting was initially to build a broader consolidation of labour movement regarding the minimum wage, outsourcing and social security (LIPS, 2013). A broad alliance of KNGB managed to organize more unions to join, which resulted in a wider area of strike. Some regions that were not involved at the first strike then participated in the second strike, including Yogyakarta, Palopo, Aceh, Maluku Utara, Sulawesi, Makassar, Gorontalo, among others.[15] For instance, similar to the increased number of local alliances that participated in the general strike, Altar (Tangerang Raya Alliance/Aliansi Tangerang Raya, which did not participate in the first strike, then supported the second strike.[16]

A heated argument occurred within KNGB regarding the social security issue and electoral politics. In general, the debate was between KSPI and some members of KNGB regarding the social security issue that arose in 2009. KSPI was the main actor of the bloc that supported a social security model based on a membership fee (pro-BPJS) while many unions in KNGB rejected this model

15 Interview, Baris Silitonga, 9 January 2014.

16 The reason behind this decision was due to the decision by FSBKU, one of the primary members of the alliance, to support the second strike. It was because its affiliate confederation, KSN, agreed to organize the strike and joined KNGB.

(anti-BPJS). It was the same with the electoral issue. KSPI exercised its political electoral idea by promoting its members through some political parties, while Sekber and some other unions rejected the idea as a 'bourgeoisie election' and decided to be a non-voting group.

Negotiation ideas became crucial in this situation. Both conflicting blocs inside KNGB agreed to avoid debates on these issues and focused the discussion only on minimum wage and outsourcing issues. The demands at the second general strike were a minimum wage hike of 30 per cent (50 per cent for DKI Jakarta), the elimination of the outsourcing system and the annulment of President Instruction No.9/2013 on minimum wage.

After the second general strike, KNGB lasted a bit longer than MPBI. It dissolved in mid-2014 due to differences in position regarding the 2014 presidential election. Since its inception, KNGB had carried a crack regarding its position in the Election, particularly the three major groups inside KNGB (KSPI, Sekber Buruh and GSBI). These differences in practice were too difficult to negotiate and KNGB was only successful as a vehicle to organize the second strike. Later on, Sekber Buruh split away. The main cause was differences in position and strategy among its members regarding the projection of a long-term alliance with FSPMI, which is currently the largest union federation. One bloc called for a firm decision to end the collaboration with FSPMI because of its decision to support a candidate for president who had been involved in a human rights violation. The other bloc wanted to preserve the collaboration for the sake of long-term interest due to its large membership. The split of Sekber Buruh influenced the formation of a national alliance for the third strike.

At the third general strike, two national alliances were formed; they were KAU-GBI (Action Committee for Wage-Indonesia Labour Movement/Komite Aksi Upah-Gerakan Buruh Indonesia) and KPR (People Resistance Committee/ Komite Perlawanan rakyat). KAU-GBI comprised of KSPI, KSPSI-Andi Gani, KP-KPBI and then GSBI, FSPASI and KSBSi Mudofir joined the alliance). KP-KPBI (Preparation Committee-United Confederation of Indonesia Labour Movement/ Komite Persiapan-Konfederasi Persatuan Buruh Indonesia) is an embryo of a new confederation. Most of its members are unions that joined Sekber Buruh. Therefore, KAU-GBI's members, in addition to former MPBI's members (KSPI, KSPSI Andi Gani and KSBSI Mudofir) were also former Sekber's members that decided to maintain collaboration with FSPMI, while KPR's members were former Sekber members that decided to stop cooperating with FSPMI.

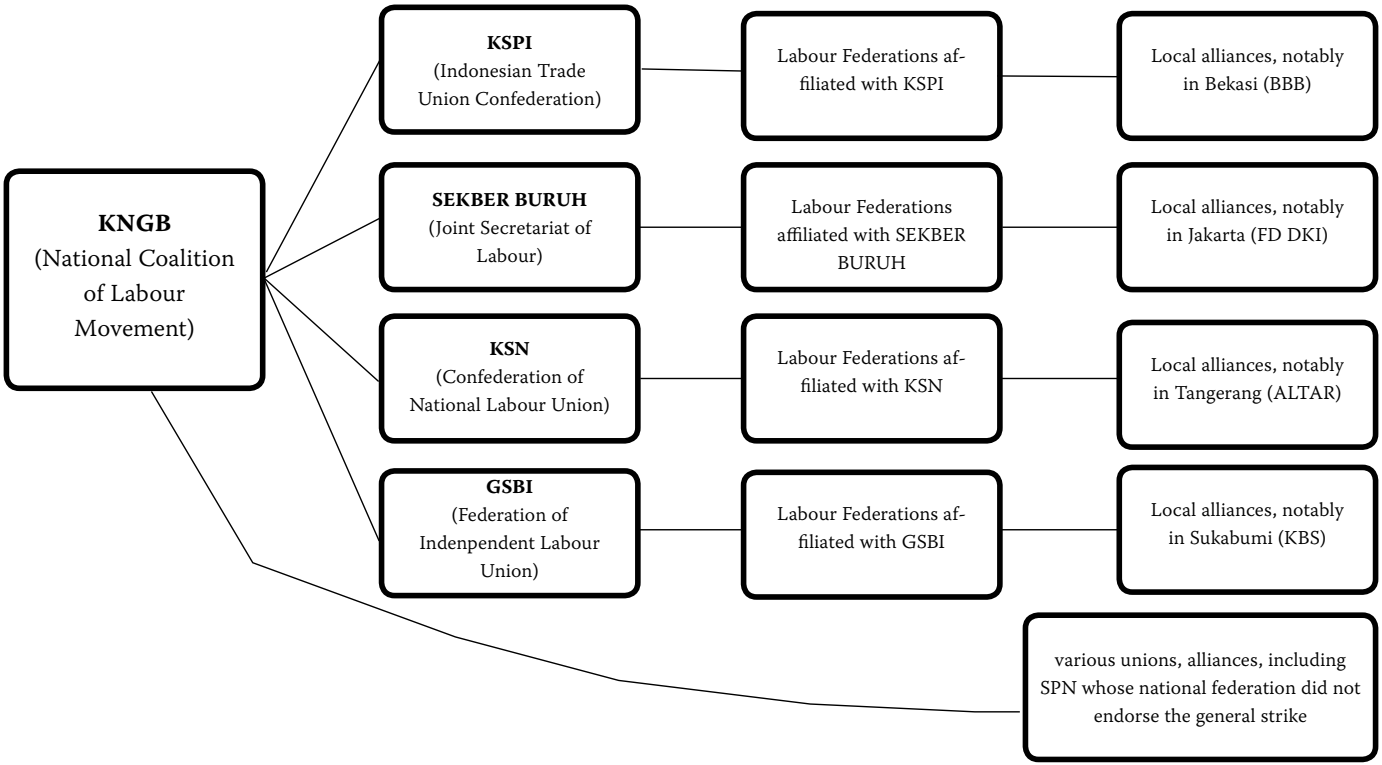
How then did the national alliance communicate its instruction from the national level to the plant level union? The national alliance did not have a regional structure. There were no KNGB branches in Bekasi or Jakarta. The

chain of command was carried out based on the internal structure of each confederation and federation. After the national alliance decided the date of the general strike, the next step was to deliver the instruction to its members at the lower organization structures. At the same time, the unions in the local alliance, of which its leadership at national level join KNGB had coordinated. They also invited other unions in the local alliances, the national leaders of which had not joined KNGB, to support the general strike. By using local alliances, the general strike was not only organized by unions that joined the national alliance but also wider than that. For example, at the first and second strike, the national leaders of SPN (National Workers Union/Serikat Pekerja Nasional) did not support the strikes, however, some leaders at regional level supported the strikes and participated in protest actions organized by the local alliance.[17] The general strikes could only happen after there were many trials and errors in joint protest actions of many unions at the local level, particularly on the issue of the minimum wage increase. The strikes benefited from the infrastructure of local alliances, which was already established and developed at the grassroots level. Thus, the strike was not an isolated event that appeared out of thin air but had gone through a long process of development and its success was possible through much collaboration between many unions at the grassroots level in many regions.

The figure below illustrates that various alliances at the grassroots level achieved a massive mobilization during the general strikes, including the Buruh Bekasi Bergerak (BBB) or Bekasi Workers on the Move in Bekasi, Forum Buruh DKI (FB DKI) or Jakarta Forum of Labour in Jakarta, Aliansi Rakyat Tengerang Raya (ALTAR) or Alliance of People of Greater Tangerang in Tangerang, and Koalisi Buruh Sukabumi (KBS) or Coalition of Sukabumi Labour in Sukabumi. There were at least three workers' alliances in Jakarta, one big alliance in Bekasi, five coalitions in Central Java, one alliance in Serang, and so on. Additionally, although their national centres did not endorse the general strike, several other unions at district and provincial level joined the mobilizations. These coalitions between unions from different federations and confederations at the local level played a significant role in labour mobilization during the nationwide strikes.

17 SPN (National Workers Union/Serikat Pekerja Nasional) is a federation union that has the largest number of members. Most of its members are workers in the garment and textile sector. Thus, the involvement of SPN at regional level at the first and second strike, which was a violation of its national leaders' decision, in several regions had significant influence in the number of workers who joined the strike. See also Dahana and Arifin on this volume for more account on the SPN.

Figure 1. Coalition Structure of the General Strike, 2013


KNGB
(National Coalition of Labour Movement)
KSPI
(Indonesian Trade Union Confederation)
Labour Federations affiliated with KSPI
Local alliances, notably in Bekasi (BBB)
SEKBER BURUH
(Joint Secretariat of Labour)
Labour Federations affiliated with SEKBER BURUH
Local alliances, notably in Jakarta (FD DKI)
KSN
(Confederation of National Labour Union)
Labour Federations affiliated with KSN
Local alliances, notably in Tangerang (ALTAR)
GSBI
(Federation of Indenpendent Labour Union)
Labour Federations affiliated with GSBI
Local alliances, notably in Sukabumi (KBS)
various unions, alliances, including SPN whose national federation did not endorse the general strike

Counter-Attack Against the Wave of Strikes

After labour won some victories, there was a strong backlash from capital and the state. Employers had taken the threat of a strike wave seriously and tried to consolidate their power. They were aware that the growing capacity of workers to mobilize for protests was a serious danger to their business. The fact that many factories operate as part of a supply chain, like those in the densest industrial estates in Bekasi means that a disruption in production in one workplace affects the production process in another, and so on. Employers and business associations recognized how disruptive the situation could be, especially after knowing what had occurred in the case of PT Samsung Indonesia, where workers at two supplier factories of PT Samsung Indonesia jointly conducted a factory raid in mid-2012, which eventually disrupted the operations of PT Samsung Electronic Indonesia (SEIN) (see Mufakhir 2014; Mufakhir 2013).

Employers retaliated in response to the strike wave. Around the Bekasi industrial estates, workers were prohibited from taking their motorbikes to work because it helped to increase the speed of workers' mobilization for protests. The management installed CCTVs much more than before. Thugs and gangsters, hired by employers, harassed union activists in public to spread terror and fear. Union activists were randomly stopped and forced from their motorbikes by thugs. These union activists or members were easily recognized, especially if they were wearing union signs on their clothing or had a union sticker on their motorbikes. Although they were not physically assaulted, it made activists more cautious about their union activities in public spaces.

Employers in the Bekasi industrial estates would mark a worker's employment reference letter (known as '*paklaring*') with a special mark, especially in the case of union leaders or active union members who had participated in a strike. The purpose of this mark was to identify 'troublemakers'. If they were fired, it was difficult for them to get a job at any other factory in Bekasi. Allegedly, similar to the special code stamped on the identification card of anyone associated with the Communist Party of Indonesia (PKI) during the New Order regime, this 'troublemaker' mark forced the worker to look for a job outside Bekasi.

Employers also spread fear in the areas surrounding factories by approaching community leaders or village heads. It was part of a common pattern of patron-client relationships where companies called on the village head to appease workers. The purpose was also to strengthen the company's presence within the local community, so it would support the company's position rather than the workers. In the Bekasi area, some companies had accommodated a number of village heads and as a result a group named MBB (Masyarakat Bekasi Bersatu, United Community of Bekasi) was formed. The group consisted of eight village

heads of settlements within the Bekasi industrial area. On 29 October, 2012, MBB members harassed workers who were on strike in front of the factory gate and tore down some of the workers' tents.

At the state level, new regulations have been issued to limit strikes. Unions are now required to submit a notice of a strike, rally, or demonstration to the police, with the name of the coordinator, at least five days prior to the event, and must also include a copy of one worker's ID card for every 20 participants. Union activists find these requirements a contradiction of the law which guarantees the basic right of workers to strike. Another retaliatory measure was to localize decision-making, such as the minimum wage, to a bipartite, company level. A Presidential Instruction of 2013 suggested that the stipulation of wage increases shall consider the company's economic situation in order to maintain the business. Employers also successfully managed to introduce the regulation (Government Regulation No. 78/2015) that the minimum wage increase would be automatic with no negotiation through the wage council as before. The formula is based on the percentage of economic growth and inflation. This regulation also suggested that negotiation through the wage council to review the minimum wage shall take place every five years instead of every year.

Furthermore, the central government issued a certification scheme which declared certain economic units 'national vital objects'. The Ministry of Industry has guaranteed an added layer of security for 49 industrial firms and 14 industrial estates with the help of the National Police's Directorate of Vital Object Security and with the help of the national army (Salim 2014). This means that workers face strict restrictions on any kind of protest in these factories or industrial areas. Even an instant noodle company that belongs to PT Indofood Corp. is certified as vital and strategic to the country's economy, as the management could afford the expensive 'certificate fee'. Therefore, this instant noodle factory is closely guarded by security guards and the military.

In response to the demand for a wage increase, government and the association of employers, especially the labour-intensive manufacturing sector, immediately coordinated a counter-attack. By the end of 2011 in the Bekasi district, APINDO (Asosiasi Pengusaha Indonesia/Indonesia Employers Association) filed a suit with the Administrative Court and demanded the Court cancel the enactment of the minimum wage increase because the increase had burdened the employers to pay higher wages which could cause relocation and impair investment. In addition, some think that it was a populist policy from the ruling West Java governor in order to win the next election. The lawsuit was granted by the Administrative Court. That very day thousands of workers in Bekasi spontaneously responded to this by blockading the Jakarta-Cikampek

toll road. Throughout January, there were three Jakarta-Cikampek toll road blockades. This toll road is the thoroughfare for goods to and from important industrial areas in Bekasi, Karawang and Purwakarta. This road also connects the industrial estates with the main port in Tanjung Priok, Jakarta. This counter-attack shocked and panicked the national government who took immediate action by asking the Administrative Court to overturn the verdict.

In response to the 2012 minimum-wage hike, in December 2012 the Minister of Manpower and Transmigration released Ministerial Circular No. 248 of 2012 which urged all governors to speed up the process of suspending the minimum wage. This Circular was issued immediately after governors had issued minimum wage provisions in different regions. Instantly, APINDO coordinated its members to propose that the 2013 minimum wage be suspended in different industry-intensive regions. Three of them were Banten, Jakarta and West Java Province. Those three provinces are export-manufacturing bases for Indonesia, where 70 per cent of the country's manufacturing industry are concentrated. As usual, the government gave a hand to the employers. The minimum wage suspensions in those three regions were granted by the respective governors. Labour unions once again, launched resistance.

Previously APINDO was opposed to the West Java governor and filed a lawsuit with the Administrative Court against the governor. However, in 2013 APINDO collaborated with the governor to obtain an approval to suspend the minimum wage. In contrast, labour unions in Bekasi were previously opposed the Administrative Court which ruled against blockading the toll road. In 2013, labour unions filed a lawsuit in the Administrative Court opposing the governor's decision. APINDO and the labour unions both changed their strategy. Alternately they took the legal option. After the labour movement went through the legal process accompanied by mass mobilization, the Administrative Court of West Java and the Jakarta Province then ruled that the policy of both provinces, which approved the minimum wage suspension, was a violation of the law. Therefore, the governors were ordered to overturn the policies, and employers were obliged to pay the wage gap immediately.

However, the policy that approved minimum wage suspension had already triggered various negative impacts in the field. Hundreds of thousands of workers had been paid below the minimum wage, and the Administrative Court ruling could not do anything to stop this. The Court's ruling to lift the minimum wage suspension only stopped the legal aspect, without further concrete intervention in the field. West Java and the Jakarta governor, the ones who were responsible, just washed their hands, even after the Court ruled that their decision was wrong. None of those parties made sure that employers would pay the wage gap. The law

allows a minimum wage suspension at a company level, and this has not been the target of labour union resistance. Therefore, when the minimum wage increases, the companies immediately suspend the minimum wage implementation and the affected workers then do not receive the increase. Unlike some previous years when the proposal to suspend the minimum wage was conducted by the respective companies, in 2013 it was conducted collectively under the coordination of APINDO. Furthermore, the employer's association strongly urged the government to issue a regulation that facilitated the procedure to suspend the minimum wage.

As a result, 1,600 companies proposed the suspension of the minimum wage, mostly within the textile, garment, and footwear industries, which are known as low-wage and labour- intensive industries that are prone to violate worker's rights. If the government had granted the proposal to suspend the minimum wage, while workers in other sectors enjoyed a wage increase, this would have widened the gap and worsened workers' conditions.

In mid-2013, in order to anticipate the 2014 wage increase, the President issued the Presidential Instruction on the Minimum Wage. This regulation prohibited the wage increase from being more than the rate of economic growth (in percentage terms), and allowed the police to be involved in the process of negotiating the minimum wage by the wage council. This regulation shows that the state has elevated its response and the level of force. Previously, state intervention in order to limit the minimum wage was only conducted by local government (governors), and gradually it was conducted by the minister, and now the president. This presidential instruction reaped resistance, which peaked during the second general strike. After the issuance of this presidential instruction there were several labour union actions which were handled repressively by the government. Followed the previous consolidation between the state with capital which increasingly better since the first strike. The government started to use excessive force in response to the labour movement which had been even more confrontational with strategies that included hitting the streets to protest. In Bekasi, the signs of street resistance had been seen since the mid-period factory raid, and became stronger after the first strike. Two industrial estates in the Bekasi district were declared by the government to be national vital objects.[18] This was followed by an instant noodle factory in Purwakarta which was also declared a national vital object. Then Nusantara Bonded Zone (Kawasan Berikat Nusantara (KBN) Cakung in North Jakarta was declared a national vital object. This

18 East Jakarta Industrial Park (EJIP) and Jababeka Industrial Estate

Bonded Zone even cooperated with the military on a national level. Moreover, the government granted more companies with tax incentives (Ariyanti, 2013).

The escalation of counter-attacks has become increasingly significant. The most recent was the issuance of Government Regulation No 78 of 2015 on the minimum wage. This regulation regulates the standard formula for the minimum wage increase, which is based on the applicable wage, economic growth and the rate of inflation.[19] With inflation projected by the Statistics Bureau until 2025, it can be guaranteed that the minimum wage increase all over Indonesia will never be higher than 11.5 per cent. The enactment of this regulation has also caused the wage council to lose its function. Therefore, in addition to limiting increases in wages, this regulation also weakens the participation of labour unions in determining the minimum wage—whether in the wage council or on the street.

In the hierarchy of law in Indonesia, government regulation is above all presidential decrees (presidential instruction and presidential decree), and above ministerial decree. Government regulation is one level lower than the constitution and law. Government Regulation No 78 of 2015 is the most authoritative interpretation and also supersedes all previous minimum wage regulations. This shows that the state's response is becoming stronger. Labour unions fought back, and the third general strike was the peak.

Conclusion

Since 1998, a wave of strikes has taken place in many Indonesian towns and cities involving several million workers. Recovering from the dictatorship since *Reformasi* in 1998, and in the face of severe fragmentation, the labour movement has been active in shaping the country's political dynamic. This chapter discussed strikes since 1998, including the general strikes in 2012, 2013 and 2015, and examines the dynamic of workers and labour unions' capacity for protest mobilization. Indonesian working class is gaining strength and confidence, and has increased their capacity for mobilization. Workers have shown their ability to play a greater role to enforce policy changes, and develop a capacity to exert their power in broader political struggles. Workers and unions have combined different strategies of legal and non-legal struggles, including direct actions, in order to achieve their goals.

19 These are national economic growth and inflation rates, while the minimum wage is applicable only in each province and city/district. Therefore, the inflation does not mirror real inflation in each region, and only an average national inflation. In addition, calculation of the national inflation rate occurs every five years and uses 4000 commodities. The minimum wage is determined every year and considers only 60 commodities in Decent Life Components.

Collective experiences of strike and resistance have taught them that grassroots labour organizing is necessary for success in political struggles. Although still limited, these achievements would not have been possible without support from workers and alliances at the grassroots level. The alliance of labour unions plays a vital role in the success of labour protests, including general strikes. Workers' resistance that escalated into factory raids and general strikes was possible due to active involvement of local alliances at city, district and sub-district levels. The political agenda for the Indonesian labour movement today is to document all of these experiences to enable continuous learning, and to develop more effective strategies for the future. But the most urgent task now is to be ready to respond effectively to the inevitable counter-attacks from state and capital.

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CHAPTER FOURTEEN

Collaboration for Rights: The Alliance of Brick Kiln Workers and The Labour Qaumi Movement in Pakistan

by ZEENIA SHAUKAT

Introduction

Pakistan's brick kiln sector, concentrated mainly in the provinces of Punjab and Sindh, is characterized by bonded labour. The debt bondage emanates from overall poverty, marginalization, low skills, low mobility, an asset-less state, poor wages, and compromised work conditions. Together these factors contribute to acute exploitation of workers, unresolvable so far because of the state's unwillingness to take concrete action to address the root cause of the bondage, coupled with workers' own inability to craft an organized resistance against their working conditions. In 2013, the brick kiln sector in the Punjab found a partner in the Labour Qaumi Movement (LQM), a powerful organization of power loom workers with vast membership. The fundamental strength of LQM is its mobilization capacity. The street oriented organization has used its mobilization skills and the street power to highlight the cause of the brick kiln workers.

This chapter traces the collaboration between the brick kiln workers and the LQM. It documents the collective strategies that enabled the former in bringing state authorities and employers on table to offer a deal that may alleviate the level of exploitation against the workers in the sector. The collaboration is still going strong and has also spread to other areas of the Punjab, Pakistan.

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A Brief overview of the Brick Kiln Sector

Brick production is one of the oldest industries in South Asia. Pakistan is one of the four countries that contribute 75 per cent to the global brick production (Baum, 2016). Solid hand moulded bricks are produced in kilns situated away from main cities and towns. The industry is referred to as small scale in literature. Recent figures suggest that there are around 15,000 to 18,000 kilns in Pakistan (Warraich, 2015). The Punjab province has a high concentration of kilns. Despite involving an investment of Rs 5 million (about US$ 50,000)[1], due to its peculiar features, it is still counted as an informal sector and stays out of the tax ambit (Khattak, Khan, and Jan, 2009). Labour employed with the brick kiln sector is characterized by vulnerability, primarily because of debt bondage emanating from overall poverty. If the official definition of bonded labour, as cited in Pakistan's bonded labour law 'Bonded Labour System Abolition act 1992' is followed, the workers in the brick kiln sector are essentially bonded labour, as they render their labour and forfeit their freedoms, in return for a *peshgi* or an advance sought by a worker or his family, to their creditors (Bonded Labour System Abolition Act 1992).

The low wages, currently set at Rs 1,036 (US$ 10) per 1,000 bricks, in addition to acute poverty and inaccessibility to basic services such as healthcare and housing, force the workers - mainly working as family units - to seek substantial loans as advances. This is done mostly at the time of joining the kiln as well as later on. These advances are aimed at meeting special expenditures such as illnesses, weddings or any other emergency. The debt is repayable through the work of the labourer employed. Hence, the remuneration payable for every 1,000 bricks also comes with a deduction of the advances taken. There are accusations of false figures as workers, mostly non-literate, do not have an understanding of the accounts and complain of being misguided by employers regarding their debt position. The workers are not allowed to leave the kiln till the repayment is complete. However, there is an arrangement for workers to move to another employer, as long as the original employer has his debts cleared by the new employer. For the workers, there is no difference in the level of indebtedness then, as earnings, either from a previous or new workplace, are so low that advances cannot be paid back for many years. According to the latest figures by the Punjab Government's Evaluation Report on Project 'Elimination of Bonded Labour in Brick Kilns' the advances sought by workers lie in the range of Rs. 50,000 to Rs. 400,000 (US$ 500 – US$ 4,000) (Government of Punjab, 2014).

1 1 Rupee = US$ 0.0095

Brick Kilns: Production and Working Conditions

Family units as a whole are attached to the sector that takes part in various processes of production. Four main steps are involved in the production: The unbaked bricks are prepared by *patheras* (they could be broadly described as 'moulders'; these are men, women and children, mainly migrants and bonded). These bricks are loaded and stacked in kilns by a section of workers called *bharai walahs (*loaders; adult and juvenile males). The bricks are then baked by *jalai walahs* (oven temperature managers). Following this, the uploading, cartage and stacking of bricks is carried out by *nikasi wallahs* (stackers, mostly locals).

Except for *jalai wallahs*, all other categories of workers are paid on a piece rate basis of 1,000 bricks (PILER, 2004). These rates are fixed by the provincial government through their respective minimum wage boards. The Provincial Labour Department is responsible for implementation of the minimum wage order (Iqbal, 2006). For brick kilns, these piece rate wages are announced for separate categories of work. The wages are payable to the entire family for the production of 1,000 bricks. Despite the heavy involvement of women and children, their labour is not counted as separate.

Kiln workers, especially the *jalai wallahs* and the *patheras* live onsite. These can be 20 or more households consisting of 100 or more men, women and children (PILER, 2004). It makes economic sense for both workers and the kiln owners to settle for this arrangement as the workers, being mostly migrants and poor, are unable to afford housing in nearby towns. Besides, the activity of brick making is spread across the day. Staying onsite saves on commute time. The shelter is either free or a deduction is made for the electricity consumption or rent. An onsite shelter also strengthens the bondage condition as the owner/manager is able to keep track of the workers' whereabouts. Reports of threats, intimidation and sexual harassment are very common. Even though staying onsite appears as a mark of housing security, it may leave workers at the mercy of the kiln owners who can evict them anytime they want.

Brick production is a seasonal enterprise usually spanning a period of 150-180 days a year. The operations are closed during the rainy season of July to August and December to January. Those in debt may be refused permission to work elsewhere temporarily. This leads to pursuit of further loans as, being paid on piece rate, workers are not paid when the operations are closed.

For kiln workers, their relationship with employers is mostly unequal, based on fear, and at times, harassment, intimidation and violence. Adverse working conditions due to debt bondage are very common. A 2002 survey on workers in brick kilns in the Punjab noted over two-fifths of worker households having

suffered threats of various types against leaving their jobs before clearing their debts. Over a third of the brick kiln workers reported actual experiences of verbal abuse and physical violence at the hands of their employers (Government of Pakistan and International Labour Organization, 2002). Despite poor payment of wages in addition to the condition of bondage, there has been little effort by the government to enforce a minimum wage or improve working conditions in the kilns. This is not helped by poor organization of kiln workers and an inadequate government mechanism to execute labour inspections and enforce labour laws. Workers also have inadequate knowledge of their rights, existing minimum wages and limited skills of record keeping and alternative employment.

There are varied figures regarding the number of brick kilns in Pakistan. Some figures cite between the ranges of 15,000 to 18,000 (Warraich, 2015). The latest Punjab Government survey indicates the presence of 6,090 kilns in the province (Punjab Portal, 2016). As with other parts of the country, these kilns are situated away from main cities and towns and are scattered. This makes workers' mobility difficult as it makes the registration and inspection of the kilns, regulated by Pakistan's Factories Act, a challenging task. This also explains why the exploitation of workers is easy to get away with.

Though there is some degree of organization among brick kiln workers, in addition to support from rights groups and NGOs, a concrete movement for rights has not materialized. Very few trade unions in the sector are registered (Trócaire and Institute of Social Sciences, 2011). Women's participation in these unions is inadequate too. The nature of work in the kilns – arduous and long working hours – remote locations, restricted mobility as well as disempowerment of workers are factors that prevent workers from organizing for their rights. It has also been noted that among bonded labour, religious and caste differentiation has acted as an obstacle in building organized resistance (Ercelawn and Nauman, 2001). NGOs, donor organizations and other rights groups have been involved in rights awareness, facilitating access to identity cards, access to minimum wages and protection against harassment.

Political participation, in terms of seeking representation in the parliament/policy-making/service delivery as well as in political activities is restricted because of poor access to National ID cards. Voter registration, especially that of women is also limited. A 2009 study by the SDPI – in pilot areas of the Punjab - found that only 20 per cent of men and no women are registered as voters (Khattak, Khan, and Jan, 2009).

The Alliance between Brick Kiln Workers and The Labour Qaumi Movement

Introduction of the Labour Qaumi Movement

Since 2013, the brick kiln sector in the Punjab found a partner deeply invested in the interests of the workers. This stakeholder is the Labour Qaumi Movement, a powerful organization of power loom workers that has a vast membership. The LQM's alliance with the brick kiln workers, starting initially from Faisalabad and then spreading to other parts of Punjab has resulted in strong mobilization around the cause of rights for the kiln workers. Before sharing the details of this alliance, it is important to share a brief background of the LQM, as an organization, to develop an understanding of how its strengths have rubbed off on the brick kiln workers, commonly known as 'bhatta workers' in Pakistan.

The Labour Qaumi Movement was formed in October 2003 as an organized force fighting for the rights of workers in the textile industry, focusing on the power loom sector. The movement is established in and operates from the textile-dominated city of Faisalabad though it has presence in other parts of Punjab too. The early struggle of the movement concerned wage raises, social security registration, appointment letters for workers, and withdrawal of false cases against workers. Despite having limited resources and capacities, the group members mobilized power loom workers by running a door-to-door campaign and raising funds through weekly donations. Once the movement succeeded in obtaining access to minimum wages for the power loom workers, they gradually expanded to extend solidarity support to the rights of workers in other areas of the textile sector, transport sector and political movements, mostly in Faisalabad.

Though the Movement acts as a trade union for textile workers, it essentially seeks to function as a community organization ready to stand up for the issues of workers from other sectors and even those of the general public. Due to the concentration of textile workers in Faisalabad, and the Movement's support for the workers' cause, it has a very impressive mobilization capacity, at times gathering up to 200,000 workers for major rallies. The Labour Qaumi Movement has not registered itself as a movement/organization. However, as shared by its leader in a phone interview, it is registered as the Textile-Garments Power Loom Workers Union in Punjab and the Allied Power Loom Workers Union in Faisalabad.

As explained by the members, the LQM's style of working is *ehtejaj* or 'protest'. The street oriented organization, due to its strong membership base, can gather a rally within a matter of minutes. These rallies are peaceful but could become confrontational too, 'if pushed into the corner'. This includes showdowns with the police over 'security issues' and registration or withdrawal of cases. The group's strong mobilization capacity has compelled even the employers to seek their support in agitation against the government over Faisalabad's critical electricity shortage crisis (that negatively impacts the industrial sector). The LQM elects leadership at central, district and sectoral levels. Elections are held in sectors every year, in districts every two years, and on the central level every three years.

As shared by members of the LQM in an interview with the author, the group is run through funds collected through individual donations of Rs. 20-30 (approx 20-30 US cents). These are collected on a weekly basis as workers get paid on a weekly basis. There is also a nominal annual membership fee. The collection of donations often lands the group in trouble as they are sometimes targeted by the police on charges of extortion. The group also shares that it runs a service along the lines of rescue support for its members. 'Be it any issue, if there is an emergency, we advise our members to call us on our phone number. We either alert the concerned sector of the LQM or reach the spot ourselves to help our members.'

There is limited involvement of women in the group because of the lower presence of women in the power loom sector and their inadequate mobilization as an organized force in the textile sector. This is not to be confused with their employment in the sector, which is sizeable. The LQM also admits that women's mobilization has been a problem because the group has not been able to undertake measures such as separate transport or arrangement of washrooms etc. for women in times of protests. The LQM does not want to ally with any political party, though it supports causes and, as it indicates, pro-workers' policies of political parties. It has resisted incorporation by mainstream political parties.

The LQM's efforts have resulted in expanding the registration of power loom units while a gazette notification announcing the wages of loom workers, in addition to improved terms of working, has also become a reality. However, as gauged from the interview conducted for the purpose of this study, the LQM has a different outlook on success. It counts as its success its mobilization capacity and the outcomes of its rallies. Among others, these include: issuance of wages from owners who had closed down their factories and earlier refused to pay their

employees, and the practice by employers of seeking the consent of LQM sector leadership when there is a need to fire an employee.

One of the highlights of the LQM's struggle was the launch of a protest in July 2010 against the power loom owners' reluctance to implement the 17 per cent rise in the minimum wages announced by the then government. The workers, over 100,000 in numbers, launched a street protest for three weeks, shutting down the industry (Labour Education Foundation, 2016). The struggle was widely reported because of its magnitude and also because in its aftermath, six leaders of the LQM were accused by employers for acting as 'terrorists' and were arrested by the local police. In early November 2011, the Anti-Terrorism Court of Pakistan sentenced these six leaders to 490 years in jail for terrorism offences, despite the lack of any legitimate evidence to justify their arrest and sentencing (Asia Pacific Solidarity Network, 2012; Zahnd, 2011). The workers were recently released after spending five years in jail over false charges.

LQM and Bhatta Workers: The Realm of Solidarity

The LQM attached itself to the cause of bhatta workers of the Faisalabad city in late 2013. It started with the sector president of LQM in the Jhang district who spotted, while on his commute, a group of men kneeling down in a queue at a kiln. As shared by Latif Ansari of LQM, the sector president visited the kiln late in the night, to seek workers' access in private, and he inquired about the matter. 'He was told that the workers were being punished for seeking a wage raise from the owner.'[2]

The workers were advised to visit the District Coordination Officer of Faisalabad to lodge a complaint against the owner and to also resolve the matter of the minimum wage. Only one worker, out of the force of 70 workers employed at that particular kiln, agreed. However, the next day, that worker turned up with his entire family at the DCO office. LQM members also reached the office. When the DCO did not give an encouraging response, the LQM members staged a protest. Eventually, the DCO sent a police officer and a complaint was registered against the kiln owner for his treatment of workers.

The *bhatta* workers were supported by the LQM to file an application with the Labour Department to ensure payment of Rs 740 as the then minimum wage fixed by the provincial government. The LQM also started approaching workers in the nearby kilns for solidarity over the issue of payment of minimum wage. In contrast to the first meeting with the Labour Department where only workers

2 This information and other details of the collaboration were shared by LQM's leader Latif Ansari at the Sindh Labour Conference organized by PILER in September 2014

from one brick kiln showed up, the follow up meeting, according to LQM, had 500 plus workers coming together.

The Jhang case was followed by a protest rally in Toba Tek Singh where the LQM threatened a Long March to Punjab province's capital Lahore – the centre of the government - if the remuneration of the area's brick kiln workers was not raised. Another demand by the workers was to halt the practice of deduction from their wages against the traditional advance. The practice resulted/results in erosion of their income, leaving them with a meagre US$ 3 per 1,000 bricks as take-home remuneration.

The two important challenges for the planned Long March were resource mobilization and strength for the movement. Multiple meetings over the issue resulted in the devising of a strategy to address these concerns. All participating workers were tasked to produce at least one thousand extra bricks every week and contribute the remuneration to the funds to organize the march. The group also undertook the decision that workers would be mobilized from kilns that were on the route of the march to add to the numbers.

The Long March to Lahore was initially launched from the Kamalia district of Punjab in the third week of November 2013 with Toba Tek Singh being the first stop. The crowd comprised LQM workers as well as the bhatta workers of Faisalabad district. As they moved forward, they found supportive elements in the state as well. District Coordination Officer (DCO) Toba Tek Singh, Dr. Farah Masood, upon hearing the grievance of workers issued an order for the brick kiln owners to follow the minimum wage notified by the government. In the Kamalia district, Assistant Commissioner Syeda Ramla did the same. As LQM states, at least ten brick kiln owners were taken to task against violations of the minimum wage notification.

The march had strong participation of women. Stopping at villages and towns en route to Lahore, the participants were supported by brick kiln workers on the way who provided meals and shelter. Three days into the march, the protesting workers were approached by the Punjab Administration through the DCO, Regional Police Officer, Assistant Commissioner, Director of the Labour Department and other officials. In order to prevent them from carrying the march forward, the Administration negotiated an agreement between the LQM, the Brick Kiln Owners Association and the District Managements of Faisalabad and Nankana Sahib. The agreement stipulated that all brick kiln owners would pay the rate of Rs. 740 per 1,000 bricks and no worker will be detained forcefully at the workplace. The LQM also insisted on a directive for the police to take action to identify cases of bonded labour by workers. The march was then called off after an agreement was reached (Mahmood, 2014).

The notification issued by the concerned officials was followed by once-a-month meetings with the District Coordination Officer to track the progress of the implementation of the minimum wage order. Bhatta workers, now organized as the Bhatta Mazdoor Union, worked with the LQM to expand the mobilization drive to other parts of the Punjab. For better coordination, a strong communication link between the LQM and brick kiln workers was formed. This line is activated every time information sharing is required over a case of bonded labour, denial of minimum wage or organizing of a protest at a short notice.

The struggle also moved from a single agenda item of minimum wages to include other demands such as health insurance, marriage grants, death grants, educational facilities, elimination of bonded labour and child labour, steps to implement existing labour laws and payment of minimum wage throughout the province.

Since 2014 the collaboration has spread the movement to the majority of the northern and central districts of Punjab. The movement also has a significant presence in South Punjab. In the words of their leadership, they have a formidable presence in 25 out of 36 districts of the Punjab.

The working strategy followed by the alliance includes protest marches, rallies, sit-ins, monthly meetings with the DCO to track progress of the implementation of demands (these meetings are also attended by the bhatta owners), strict vigilance of the working conditions of bhatta worker members and immediate calls to the state officials in case of rights violations. A parallel conference outside the premises of the South Asia Labour Conference in April 2014, and three major sit ins in Lahore that brought together workers from across the province kept the pressure up on the provincial government. They rushed every time to the workers to persuade them to call off the protest. In addition, over 85 rallies and some 200 plus corner meetings have taken place in different parts of Punjab while in Faisalabad alone there has been endless mobilization.[3]

While they have small offices in seven districts,[4] resource inadequacy does not allow the collaboration to operate offices in all the districts where they have a presence. They mostly use the sitting space of any supporter's house, in a given area, as a 'local office'. 'We use this space to disseminate information, awareness, hold corner meetings to plan rallies, and enhance mobilization/membership,' Latif Ansari shares.

Brick kiln owners too formed their own union: the Brick Kiln Owners Association. The Association strongly resisted the move to raise the minimum

3 Interview, Latif Ansari, 20 February 2016.

4 Local offices are present in Faisalabad, Toba Tek Singh, Jhang, Nankana Sahib, Sheikhupura, Hafizabad and Bhakkar.

wage. They also filed a writ petition, at the start of the struggle, challenging the minimum wage of Rs 740. However, the workers' sustained pressure forced the government to undertake measures to enforce the notification. The wages were increased from Rs. 888 to Rs. 962 per 1,000 bricks in following years. 'It has been a struggle to implement this wage rate as there is much resistance by brick kiln owners. However, things have improved.'[5]

The struggle suffered a setback when Latif Ansari, the LQM leader steering the brick kiln workers' mobilization, was attacked in June 2014. Ansari was shot at outside the Labour Department Office in Faisalabad as he returned following a meeting with the officials on the wages issue. The bullet injury left him with a crippled leg. According to the LQM leaders, despite registration of the case with the police, no action has been taken against the nominee Bhatta Owners Association President Abdul Razzaq Bajwa.

The most important aspect of the LQM-supported struggle for bhatta workers' rights is the participation of women. Women's participation in protest rallies and marches as well as regular meetings with the DCO is very strong. However, they are restricted from acting as vocal partners by their under-confidence and poor knowledge of the world outside *bhattas*. The first protest march in November 2013, which, as shared by independent sources, had the participation of 10,000 workers and had a sizeable presence of women (Bari, 2013). Unlike power looms, women are natural partners in the rights struggle as brick kiln work involves participation of the entire family. Women especially take the lead at the clay preparation level. Though they also have the responsibility of house work and raising children, in times of rallies, they normally either take the children with them or leave them behind with a trusted relative to be looked after. Women, interviewed for the purpose of this study, however, did express dissatisfaction over piece rate payment per family, suggesting it was an unjustified proposition given the individual nature of labour involved in the brick production. 'The inflation rate is too high. Much of the family income goes into buying groceries, medical treatment, clothes... We never have enough to meet our expenses. In Pakistan, a single individual's minimum wage is Rs 14,000-Rs 15,000, but we get less than that for the entire family's work.' This resentment is understandable as women, despite their hard work in kiln production, do not have access to wages. These are paid directly to men.

Responding to queries regarding women's participation, the LQM representatives said that brick kiln workers also do prefer partnership with women. 'Men themselves bring women to the protests. In the kilns, there is no

5 Interview, Latif Ansari, 20 February 2016.

concept of segregation of men and women.' The LQM leadership admits that though women's participation in protest marches is very encouraging, mobilizing women requires added measures such as transport, access to sanitation and washrooms and adequate shelter in case of a long march. 'Men can just hop on a motor bike. For women, we have to arrange a rickshaw or a male companion on the bike. We neither have that kind of setup nor do we have resources to offer such facilities for women.'

Since the start of the struggle, the Punjab Government has raised the minimum wages consistently annually in the brick kiln industry over the last three years. Alongside, they have also undertaken measures to facilitate workers' access to the raised wages. A detailed survey of brick kilns in the province has also been carried out, in addition to the registration of the kilns with the concerned government departments. This may later contribute to access to the Provincial Employees Social Security cards, which the provincial government emphasises it is fast-tracking for the 17, 240 labourers residing at 6,090 kilns in the province (Punjab Portal, 2016). The provincial government also promulgated 'The Punjab Prohibition of Child Labour at Brick Kilns Ordinance' in January 2016. Banning the employment of child labour at the kilns, the Ordinance carries a 6 months' punishment for any employers violating the provision. It also holds employers as responsible for a contravention of this law. The employers are currently protesting this move, blaming parents for involving children in kiln work. Moreover, the Act also regulates the *peshgi* (advance) system that stipulates a formal written contract between employers and workers carrying details of advances sought, wages and payment schedules. A copy of the contract is to be shared with inspectors appointed by the government to implement this ordinance.

The Support Structure

One may argue that the recent pro-rights environment for the workers is also the result of the GSP Plus status for Pakistan that carries 27 provisions related to human rights, labour rights, environment and governance.[6] Being at the receiving end of almost all human rights and labour rights violations, any measure to address issues such as the eradication of bonded labour and child labour, access

6 Interview, Khalid Mahmood, 7 May 2017. According to Mahmood of the Labour Education Foundation who has worked closely with brick kiln workers, the Punjab Government's proactive campaign to nip out child labour in the brick kilns (as against other sectors) is the result of the international anti-slavery drive. There is also an opinion that the 'Punjab Prohibition of Child Labour at Brick Kilns Act' passed by the government in 2016, making parents responsible for child labour at kilns is also leading to shifting of child labour to other sectors.

to minimum wage, and provision of social security are likely to benefit the brick kiln sector workers. The Punjab Labour Policy 2015 has explicitly linked brick kiln workers' protection with labour protection, workers' welfare, social security, and elimination and rehabilitation of Child and Bonded Labour.

An important contribution towards a sustained struggle for brick kiln workers has also been made by support groups such as the Bonded Labour Liberation Front (BLLF), Bhatta Mazdoor Tanzeem, Pattan, Pakistan Institute of Labour Education and Research, Labour Education Foundation, Human Rights Commission of Pakistan, Justice and Peace Commission, Women Workers Helpline and the Awami Workers Party, among many others. The BLLF just recently received US$ 1.2 million raised by the Humans of New York to support the cause of freedom for bonded labour.

Those working closely on labour rights feel that the LQM's support benefitted the unorganized bhatta workers more than the support of any other entity because of LQM's agitative posture that resulted in a fast response from the state in the form of steps for implementation of the minimum wages. Tariq Awan of PILER, who has been attached to the movement since the beginning feels that this is also the reason why the bhatta workers respond positively to LQM's solidarity efforts. 'Unlike NGO's work, which is mostly project-based, the LQM takes fast action. They organize rallies very frequently (at short notice). Due to their outreach, they are able to mobilize workers from across Punjab.' The resultant pressure forces the government to announce and undertake measures to address the concerns of the workers.

Given a very strong and organized force of the bhatta owners association, and a limited interest and proactivity of the Pakistani state towards the rights, the collaboration of the LQM with bhatta workers – even if it is limited to certain parts of the Punjab province – is an important development. Apart from raising the status of *bhatta* workers as stakeholders, the two-year long joint struggle has also established a space for a regular trilateral dialogue – which was earlier missing or insufficiently present from any action directed at addressing the situation of brick kiln workers. It has also transformed the narrative surrounding the solution of bonded labour from 'liberating the workers', to improving their terms as workers and addressing their marginalization as citizens.

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CHAPTER FIFTEEN

The Bottom-Up International Labour Solidarity: Victims' Organizing in the Asian Network for the Rights of Occupational and Environmental Victims

by SANJIV PANDITA

Paradox of Shining Asia

Asia, with its population of well over 4.4 billion, is home to more than 60 per cent of humanity and constitutes the largest section of the global working population. 'Shining Asia' is often portrayed as the global engine of growth and was recently also credited as being the 'global saviour' by major financial think tanks, crediting its vast emerging markets, especially China, India and Indonesia for leading the world out of its worst economic crisis which occurred in 2008 (IMF, 2010). In 2012, Asia and the Pacific contributed nearly 36 per cent of the global gross domestic product (ADB, 2013). More notably the East Asian region accounted for approximately 40 per cent of global growth and one third of global trade, which is claimed to be the highest of any region in the world (World Bank, 2013), with China being the most important component in driving this growth by being the 'world's factory' in terms of the scale of manufacturing happening here (Man-ki, 2013).

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* An early version of this chapter was published in Asian Labour Update, Issue No 86, March 2015. This chapter is a tribute to Earl Brown, who passed away on 26 February 2017. Earl was one of the founding members of the Asian Network for the Rights of Occupational and Environmental Victims (ANROEV). He played a vital role in connecting the workers' health and safety movements in Asia and America. Earl left behind unfillable shoes and he will be greatly missed as we continue to fight for justice in Asia and beyond. Earl's lifelong commitment to civil rights and the labour movement through various works and initiatives across the world, and especially the deep connections in Hong Kong, Mainland China and across Southeast Asia, has touched the lives of thousands with his passion, curiosity, intellect, spirit and humour.

Shining Asia though, has a dark side; in 2009, Asia accounted for about 57 per cent of global employment and in contrast, accounted for nearly 71 per cent of total number of workers in the vulnerable sector. Asia also has the largest number of working poor, earning less than US$ 2 a day. Almost 71 per cent of the global working poor live and work here, particularly in South Asia which, in absolute terms, not only has more working poor than Sub-Saharan Africa but also has largest percentage of workers working in the vulnerable sector (ILO, 2011).

Asia may have brought the world out of its worst economic crisis, but its workers have paid a heavy price; a large section of workers lost their jobs which led to a change in employment patterns with most of the jobs offered being insecure and mostly in the 'vulnerable sector' (ILO, 2010). In the ASEAN region, the number of working poor is believed to have risen from 140 million to 158 million people or from 51 per cent to 57 per cent of the region's workers as a result of the economic crisis.

Working Conditions in the Global Factory

> 'When the fire alarm was raised we wanted to run, however, the supervisor stopped us and asked to go back to work, stating it was a false alarm. Within minutes the fire spread fast and the only exit was blocked, even the windows were bolted with steel, some workers somehow managed to break the exhaust fan and jumped from 3 floors, I even though being 4 months pregnant also jumped to save my life. I broke my leg, but my baby is fine, thankfully.'
> (Shabnam Hussain, a worker in Tazreen Garment factory that caught fire in November 2012)[1]

The past few decades have seen an unprecedented neo-liberal expansion of Asia leading to opening up of economies and embracing the 'export-led' mantra for growth. This started the infamous 'race to bottom' where countries compete for investments (in the form of FDI). To attract investments, labour standards are lowered; tax incentives are provided for industries, and cheap labour is offered as bait. People are dispossessed of their land and rights in their villages in China, India, Burma and Bangladesh to feed the manufacturing centres either in cities or border towns. The scale of this migration is unprecedented – the largest migration in the history of humanity. In China alone the number is estimated to be anywhere between 200 and 250 million (230 million as per the ACFTU), or

1 Based on the author's interview with the victim in January 2013, in Ashulya near Dhaka, Bangladesh. The name has been changed to protect the identity of the worker.

about the two-thirds of the population of the United States (China Daily, 2011).

Shabnam is among the millions of migrant workers who are on the lowest tier in the web of global supply chains that, through a complicated network, assemble predominantly in Asia in 'sweatshops' that expose workers to fatal hazards reflected by fires in Bangladesh, mine collapses in China and toxic exposure in electronics manufacturing in Korea. The majority though end up working in the vast informal economy in Asia – as a rickshaw puller in Dhaka, tuk tuk driver in Cambodia, waste recycler in Guiyu, China, or a home based worker in the Philippines. However, reshaping of work under neo-liberal reforms has also led to massive informalization within the formal sector. Work is no longer providing a respite from poverty but may be adding to the existing vulnerabilities (Lund, Marriot; 2011). Workers often faced with the difficult choice of having to work in hazardous employment or be unemployed and watch their families go hungry.

The Scale of the Problem of the Occupational Safety and Health Asia

It is often reported that Asia has dangerous working conditions that kills, maims and sickens thousands of workers, yet no one knows how dangerous the situation is. Ironically, it is easy to obtain economic indicators for almost any country in the region, yet no country maintains proper records, if any records at all, of deaths and disabilities at work. The only available regional data is from the International Labour Organization, which estimates there were about 1.1 million work-related deaths in Asia (Al-Turaijri et al., 2008). The ILO admits that 'in most countries, vast numbers of workplace accidents, fatalities and diseases are not even reported or recorded.' The ILO data is thus based on estimates calculated using a model and extrapolating some of the data from industrialized countries such as Finland. This is because very few countries report data to the ILO, so there is a serious lack of data as, shown in Table 1.

Table 1. Work-related fatalities in Asia in 2003

REGION	FATAL ACCIDENTS REPORTED TO THE ILO (2003)	FATAL ACCIDENTS (2003) (ILO ESTIMATE)	WORK-RELATED DISEASES (ESTIMATED)	TOTAL WORK-RELATED FATALITIES (ESTIMATED)
China	**180**	**98,000**	**334,000**	**432,000**
India	**179**	**47,000**	**356,000**	**403,000**
Other Asia and Islands	**1,247**	**81,000**	**270,000**	**351,000**
Total	**1,606**	**226,000**	**960,000**	**1,186,000**

Source: ILO 2008

It can be seen from the table above that, as per the 2003 data, the annual death toll in Asia is estimated at 1.18 million workers, which is almost half of the global work-related fatalities. On occupational accidents two definite things emerged:

- Asian countries report only a fraction of the accidents compared to the estimates by the ILO, e.g. China in 2003 reported only 180 fatal accidents, whereas the ILO estimated the figure to be at 98,000. Thus according to the statistics, considering the size of working population, both India and China have a lower accident rate than many of the industrialized countries.
- Accidents only represent a fraction of the problem, as is evident from the table. Assuming the estimates are correct, for Asia, fatal accidents only comprise about 19 per cent of the total work-related fatalities, whereas a large number of workers (nearly 81per cent) are estimated to die of occupational diseases at work.

Occupational Diseases and Invisibility of Victims in Asia

In a situation where 'evident' and 'visible' accidents are underreported, if reported at all, occupational diseases stand a very little chance of being reported. In fact, there is more data on 'non-availability' of data than the real data itself. However, it is well understood that a large working population in Asia is exposed to hazardous substances at work. China's Health Minister, Chen Zhou made an unprecedented statement in 2010, claiming that 'some 200 million Chinese workers serving more than 30 sectors have been exposed to various health hazards in the workplace on the mainland.' (China Daily, Nov 11, 2010).

Similarly, a recent ILO report estimates more than 900,000 deaths occur annually worldwide due to exposure to hazardous substances at work. Considering that Asia is a hotbed of global production, there is reason to believe that a large proportion of these deaths would be taking place in Asia. Asia also continues to use many of the hazardous substances that have been banned in industrialized countries, including asbestos. Despite the overwhelming exposure of Asian workers to risk, and estimates of the fatalities by UN institutions, the victims remain invisible, and thus do not exist. So, one cannot talk about rights of sick and injured workers – if they do not exist. Compensation and rehabilitation become an issue only when 'existence' of the victim is recognized. In Asia, the struggle for victims is still in the 'existential question' stage.

Victims Organizing and the Asian Network for the Rights of Occupational and Environmental Victims

National statistics may deny their existence, yet victims of occupational accidents and disease do exist in enormous numbers in Asia and victims' organizing has been one of the most important components of labour organizing in Asia, however, the rate of union membership in Asia is very low, and the majority of workers are not organized in any form of union. Also, health and safety is not always a priority for the unions, so the victims and their organizations have taken centre stage in the struggle for OSH rights in Asia. This follows a similar pattern of the victim movement in the 60s and 70s in the US in the form of 'Brown Lung', 'Black Lung' and the 'White Lung' victims' association. Thus, since the early 80s, the victims' movement has started to take shape in some parts of Asia. Interestingly, it started in countries that were first to embrace the 'neo-liberal industrialization' owing to the large number of workers getting sick and injured at work. These countries included Japan, Korea, Taiwan and Hong Kong – the earliest temples of 'export-led' growth. The victims' groups in these countries also started to communicate with each other, and this led to the beginning of an alliance.

In 1993, two major fires in Asia led to the cementing of this alliance into a broader network. The fires took place in toy factories in Bangkok, Thailand (Kader) and Shenzhen, China (Zhili) killing 188 and 87 workers respectively and injuring and scarring hundreds more. The fires were a reminder of the gruesome working conditions that prevailed in Thailand and China, countries that were relatively new entrants to this 'export-driven growth' saga. The majority of the dead and injured were young women who had moved from villages to Bangkok or Shenzhen to earn some money for their families. In both cases, the fire exits were blocked, and many of the women had to jump out of windows to escape the fire, and tragically, many of them died doing so. The Kader fire remained the worst 'factory' fire since the Triangle Fire in 1911 that killed 114 workers and was the worst factory fire in Asia. However, almost 20 years later after the Kader and Zhili fires, similar fires broke in Pakistan (Ali Garments) and also in Bangladesh (Tazreen) in 2012, killing 289 and 117 workers respectively.

The struggle for the victims of both fires took centre stage of the Asian Victims' movement. It also led to the formation of the 'Hong Kong Toy Coalition' a broad base of trade unions, NGOs and other human rights groups working for justice for the Zhili fire victims. It also led to the amalgamation of the network, and by 1997 it took a formal shape in the form of the Asian Network for the Rights of Occupational and Accident Victims (ANROAV). As the name reflects, the initial focus of the network was to provide support to the accident victims in Asia. Gradually ANROAV took the shape of a broader alliance and though

victims groups attained the center stage, it also included trade unions, labour NGOs, academics, other civil society organizations, and individuals concerned about the occupational safety and health in Asia. Since 1999, the network started to have regular meetings and soon the membership started growing, both in terms of number of members and the geographical spread.

Table 2. ANROAV/ANROEV Meetings since 1999

YEAR	NETWORK MEETING PLACE	KEY FEATURES
1999	Macau, China	Initial phase, conceptualization and alliance building Participation from 7 Asian Countries
2001	Bangkok, Thailand	In conjunction with Anniversary of Kader Fire Rally in Bangkok for OSH Participation from 11 Asian Countries
2002	Bangkok, Thailand	In conjunction with anniversary of the Kader Fire Rally in Bangkok for OSH
2003	Bangkok, Thailand	10th Anniversary of Kader, Identifying Joint Campaigns, The Asbestos Campaign Identified more than 80 participants
2004	Chiang Mai, Thailand	Concretization of campaigns Participation in Global Asbestos Congress (GAC) in Japan decided
2005	Hong Kong, China	Participation of Victims groups from China Protest outside Jewellery Fair Hong Kong Book 'Struggle for Justice Released.'
2006	Bangkok, Thailand	Cadmium poisoning victims from China Victims exchange between India and China
2007	Hong Kong, Thailand	Occupational Disease Campaigns strengthened Participation from US and Canadian groups
2008	Manila, Philippines	Simultaneous Workshops started like Lung Disease, Electronics, Victims Organizing Samsung Victims from Korea join the network
2009	Phonon Penh, Cambodia	Network broadens about 150 participants in meeting representing 19 countries Local network in Cambodia initiated Asian Ban Asbestos Network - Created
2010	Bandung, Indonesia	Bandung Declaration on OSH Participation from European Work Hazards Network and US COSH Network Name Changed to ANROEV to include disease and environment victims. Imitating Joint Research on OSH

YEAR	NETWORK MEETING PLACE	KEY FEATURES
2011	Jaipur, India	More than 50 victims from India join meeting ABAN meeting also takes place Presentation of the research findings
2013	Bangkok, Thailand	20th Anniversary of Kader Fire Participation by Tazreen fire victims Participation from Africa Initial discussion to from Global Grassroots Network
2015	Hanoi, Vietnam	Discussion on Rana Plaza and Beyond Development of OSH and Ban Asbestos Network in Vietnam Global Solidarity network discussion

The Table lists key highlights of the network meetings since 1999. As can be seen, the network has grown considerably, with more than 50 organizations from 14 Asian countries/regions and associate membership from the United States, Canada and United Kingdom.

Bandung Declaration and Inclusion of Victims of Occupational and Environmental Disease

In 2010, the network held its meeting in the historic city of Bandung, Indonesia, which is famous for the Asia-Africa meeting of 1955 that led to the Non-Aligned Movement. During the meeting, the network jointly issued the 'Bandung Declaration on OSH' (AMRC, 2011). The declaration, which was motivated by the spirit of the Asia-Africa conference to uphold the dignity of all people, was also influenced by the European Work Hazards Network. The network pledged:

> 'We, the members of the ANROAV network, pledge to work individually and collectively to take and support actions to develop 'good work': work that is safe, meaningful, socially just and environmentally sustainable; work that enables workers to develop skills and knowledge and have a reasonable life/work balance; work where workers are treated with dignity and respect'.

The declaration also urged the nation-states to address the root cause of the problem which led to workers' deaths and unsafe working conditions, rather than portraying it as a 'mere behavioural problem' of workers. It also urged to address the structural issues ranging from making profits at the cost of workers' health, no or dysfunctional regulatory mechanisms, lack of diagnostic infrastructure leading to invisibility of victims and denial of justice to workers, their families

and communities for the harm they have suffered. The declaration also advocated for more care and protection towards vulnerable and marginalized groups that include undocumented workers, migrants, women, people of colour, and minorities.

During the Bandung meeting, the network also adapted its name to the Asian Network for the Rights of Occupational and Environmental Victims (ANROEV) to reflect its broader vision of including occupational and environmental victims. It also started a process of integrating the workers' occupational health and the community environmental health movements in Asia.

Role of the Network: Making the Victims Visible

> 'Cadmium was poisoning us, and many of us were even hospitalized. However, instead of any words of compassion, we were asked to get back to work and were not offered any compensation. Management and local government worked in collusion. We have had enough and decided to move to Beijing to get justice. We were even ready to go to the Chinese White House (President's residence) to get ourselves heard. Local officials were already waiting for us at the Beijing station, but nothing could stop us.'
> (Victim of Cadmium Poisoning in China in a meeting of ANROEV)

The network has played a significant role in terms of providing a platform for the grassroots victims and other OSH groups in Asia to come together and express their concerns, thus making them visible. ANROEV meetings are the largest gathering of grassroots victims' groups in Asia. The meetings have offered a venue for groups to share experiences and struggles, and devise strategies for joint campaigns and struggles fostering a strong solidarity movement within Asia. It also led to spontaneous collaboration between the members on specific issues leading to concrete solidarity campaigns which evolved and escalated to the global level. It also led to the formation of country-level networks in the three biggest Asian countries – ANROEV China network in China, Occupational and Environmental Health Network India (OEHNI) in India and OSH Network Indonesia.

Over the years, victims have attended the meetings and provided details of the problems they faced, starting from their visibility. When a worker becomes sick, in many places they are just told to go home to their village, where many of them die quietly. Diagnosis, or lack of it, is also one of the major reasons for the invisibility. Diagnosis of occupational diseases requires special skills and at a grassroots level such skilled professionals are not amiable and at times even the skilled professionals do not diagnose correctly in order to avoid liability. As a result, a large number of victims remain undiagnosed and cannot get

compensation. This leads to the marginalization of the victims and their families if the sick or dead person is the sole breadwinner for the family. Sick workers need to bear the cost of the treatment, which is on a constant increase and brings the victim and their family to the brink of poverty and destitution.

To address the invisibility, members together tried to publish books, posters and videos to get the attention of the mainstream media. In a recent publication, *Invisible Victims of Development* (AMRC 2012) published by the Asia Monitor Resource Centre in collaboration with the ANROEV, details the situation in six Asian countries viz. China, India, Cambodia, Thailand, Indonesia and the Philippines. The report was released in Hong Kong in April 2012 and was well received by the international media.

Network Campaigns

Over the years, the network and its members have developed critical campaigns to address the particular hazard, industry or disease in the region and thus develop a specific strategy. The campaign leaders organize workshops during the ANROEV meetings and share the strategies and updates with all the members.

Lung Disease due to Silica Dust (Silicosis)

This is one of the most prevalent yet preventable occupational diseases in the region. It is also recognized by the ILO and the WHO as one of the most serious occupational diseases impacting workers in the developing world (WHO, 2007). Even though there has been a joint program by the ILO and the WHO on the global elimination of silicosis since 1995, yet there seems to be a disconnect between the policies at the top and the situation at the ground level. In ANROEV, the silicosis campaign is led by the victims' groups from China and India. In both these countries, there is an active campaign to improve the diagnosis and subsequent compensation for victims. The following case study illustrates in detail the whole process of collaboration.

A Case Study: Collaborative Efforts between Informal Workers of India and China

Gujarat in India and Guangdong in China are separated by thousands of miles but have something in common – a thriving gem-polishing industry and a large section of the population working in the informal sector, home-based units in lots of places, to polish the gemstones. Both of these areas are facing an enormous problem with silicosis among the workers but it is worse in a place called Khambhat in Gujarat, where hundreds of workers have died in recent years, and many more are getting sick every year.

Background of Gujarat and Guangdong

In Khambhat, a semi-precious stone, agate, is polished and then used in making jewellery, which is then sold in lucrative markets in India and abroad. The work is very rudimentary and includes breaking the stone into smaller pieces manually using chippers. The small pieces of stone are then polished on a small grinding wheel where the stone is held, either manually or with the aid of a wooden board, against an electric powered grinding wheel. This part of the process produces lots of dust, as the whole process is dry – there is no water used. This exposes workers to very high levels of dust, and many of them have already died of silicosis due to the high exposure to the dust. Since most of the workplaces are also the workers living quarters, this also exposes their family members, including young children, to the deadly silica dust.

The irony is that this saga of death has been going on for more than ten years and has been covered by many newspapers. In addition to this, the National Institute of Occupational Health (NIOH), a premier OSH research institute in Ahmedabad carried out a detailed study and tried to provide some workplace solutions in the form of simple dust extraction systems, however, none of these were properly implemented due to the installation and running costs. We have to bear in mind that the workers in Khambhat are extremely poor and cannot afford workplace improvements that involve even modest costs. The traders, who make most of the money out of the trade, also conveniently choose to turn a blind eye to the whole catastrophe, while having their gems polished in this village at costs as low as possible. The workers and their families seem to be trapped in this quagmire of no hope with the death of a family member not stopping the process. Dead workers are simply replaced by a member of the dead person's family – the wife or son of the deceased, to continue the process until they also become incapacitated. The Peoples Research Training Institute (PTRC), a labour NGO based in Gujarat has been involved in this region for the past ten years and has been carrying out a series of educational and awareness programmes with workers in this region.

Guangdong, on the other hand, is the hub of the gem polishing industry in China. There are many formal factory units there that export gems worth millions of US dollar and most of the gems are polished in Guangdong province. Hong Kong owners also own many factories in Guangdong, and much of the export to global market takes place through Hong Kong, which hosts the two largest Gem and Jewellery Fairs every year to attract wealthy global buyers.
The problem started a few years ago when many workers in the formal units were diagnosed as suffering from silicosis. However, employers were refusing to pay them any compensation, and many of the companies simply closed down and opened in another province under a different name. Some of the victims, with the help of Hong Kong labour NGOs like Labour Action China, tried to push the employers, who were based in Hong Kong, to pay compensation.

These workers organized themselves into a victims association and also became part of the Asian Network for The Rights of Occupational and Environmental Victims (ANROEV). Soon the victims group realized that gem polishing in Guangdong is also carried out by a very informal sector – more like a home-based industry. They have also started to help these units to improve their workplaces so that they can protect themselves from deadly silicosis. These victims also educate workers about the hazards of dust. Even though the work process in Guangdong is also carried out informally in home based units, it is fundamentally different from the one in Khambhat, India. In Guangdong, most of the processes are wet processes, and there are relatively better tools for operation. Even though it is not a perfect process, and there is lots of room for improvement, it is relatively much better than the process in India. The polished gems are then sold via formal units. Sometimes the formal units sub-contract some of the work to these small informal groups who have other problems, like no social security or any legal protection.

Both Labour Action China and Peoples Training Research Centre, being members of ANROEV, met at one of the ANROEV annual meetings in 2005 and spoke on the issue of silicosis. It was found that workers in China and India were facing similar problems. In 2006, Asia Monitor Resource Centre (AMRC) and Labour Action China, (LAC) organized for victims and organizers from Khambhat and the Peoples Training Research Centre (PTRC) to visit Hong Kong and Guangdong. They visited some of the informal units in Guangdong Province to understand the work process there. In the same year, LAC and AMRC organized a reciprocal tour where Chinese counterparts visited Khambhat in India and saw the work process there. They also participated in a two-day seminar on silicosis in India where they met different NGOs and local government agencies. The Chinese victims' group was surprised to see the mode of production in India, and was ready to provide help. Since then, PTRC has been trying to follow up with Chinese and Indian groups to develop the industry in Khambhat so the hazard is reduced.

On the Indian side, PTRC is trying to get the workers in India to form some sort of cooperative and is exploring possibilities to raise some seed funds either from local government or some other means so that they can set up a model unit based on the Guangdong experience. Such units can be replicated and locally produced, and modified in future.

Asbestos

Asia is the largest consumer of asbestos, with China and India two of the largest consumers within Asia (Pandita, 2006). The asbestos campaign by ANROEV started with the participation in the Global Asbestos Congress (GAC)

in Japan in 2004, which was organized by the Japanese members of the network – Ban Asbestos Japan Network (BANJAN), which has been leading the Ban Asbestos Campaign in the ANROEV network. It also led to the crystallization of the broad 'Ban Asbestos' alliance in Asia in the form of ABAN network that was formally constituted in 2009 in Hong Kong. The key campaign for ABAN has been to promote a complete ban of asbestos in Asia. In this regard, ABAN meetings have been organized alongside the ANROEV meetings, to build the in-country Ban Asbestos movement. Such networks have been facilitated in Indonesia, Thailand and the Philippines. Asia exports most of its asbestos, and Canada was one of the major exporters of asbestos to Asia, and ABAN, in collaboration with the International Ban Asbestos Secretariat (IBAS), based in the UK, launched a major campaign against Canada, whose Quebec province was producing and exporting asbestos. In the past Canada has been aggressively promoting the 'safe' use of asbestos in Asia, claiming that white asbestos (chrysotile) is safer to use. It has provided funding through the Chrysotile Institute to promote the usage of asbestos globally.

In December 2010, The Asian Solidarity Delegation consisting of victims, trade unionists and activists went to Quebec Province to lobby and appeal to the citizens of Canada, and meet with politicians and the press to urge the Quebec Government not to sanction loans to fund the re-opening of the Jeffrey Mine and to stop all production and export of asbestos to developing Asian countries.

In 2011, the last two remaining mines in Canada located in the Quebec province stopped production. With the commitment of a 58-million-dollar loan from the Quebec government in 2012, the Jeffrey Mines was set to reopen. However, following a provincial election that resulted in a change of leadership of the Parti Québécois, the new Premier of Quebec, Pauline Marois, promised to cancel the loan and instead use the funds for economic diversification in the asbestos mining communities of Quebec (Ruff, 2012). The struggle, however, has continued, as Russia has now replaced Canada as the largest exporter of asbestos. In the meantime, ABAN has become a strong network in Asia with a clear aim to ban all forms of asbestos in Asia.

Electronics

Asia is also a major hub of subcontract electronics manufacturing, employing millions of workers. Electronics is known to be a hazardous industry using many harmful chemicals in the production process (Koh, Chan and Yap, 2004). The victims of the Radio Corporation of America (RCA), an electronic company based in Taiwan which exposed thousands of workers to hazardous

chemicals that led to cancers have joined the ANROEV network (Self-help Association for RCA Employees Suffering from Cancer, and Taiwan Association for Victims of Occupational Accidents and Diseases, 2001). In 2008, at the ANROEV meeting in Manila, for the first time the victims group, Supporters for the Health and Rights of People in the Semiconductor Industry (SHARPS), joined the meeting. More than 60 workers have died from cancer due to exposure to chemicals at Samsung semiconductor plants in Korea. This led to an intense campaign for safer electronics in general and justice for the Samsung workers in particular (Clarke, 2010). ANROEV has also been working with the International Campaign for Responsible Technology (ICRT), a global alliance based in San Jose, US, that monitors pollution released by high-tech companies globally, and organized a Joint Strategy Meeting on Sustainable Electronic Industry in the year 2012 in Korea (ICRT, 2012). More recently, the network has also been helping electronics workers in other parts of Asia, such as Batam in Indonesia, which is an electronics manufacturing zone where many workers have been falling sick, and Vietnam, where a number of electronics manufacturers have relocated, thus exposing workers to harm.

At the policy level, the network is working closely with the ICRT to push for a strategic response from governments towards the management of risk in the electronics industry. In this regard, network members attended the SAICM (Strategic Approach to International Chemicals Management) meeting in Vienna in 2011 (ICRT, 2011). The SAICM is a UN policy framework to foster the sound management of chemicals. The aim of the meeting was to develop a series of comprehensive recommendations for cooperative action that would call on the world's governments and industry to address the hazardous lifecycle of the electronics industry in three distinct areas: (1) design, (2) production and use, and (3) end of life.

In the year 2015, over 200 labour groups, environmental organizations, occupational health and safety experts, human rights organizations and other civil society groups led by the International Campaign for Responsible Technology (ICRT) in collaboration with the Good Electronics Network presented a 'Challenge' to the electronics industry, which outlines concerns and demands with regard to chemical safety, and urges to assume responsibility and take steps to implement changes. The challenge focuses on the importance of disclosure, substitution of hazardous chemicals with safer alternatives, protection of workers, freedom of association, participation of workers in workplace monitoring, environmental protection, and the need for compensation for workers, communities and the environment for harm done (ICRT and GoodElectronics, 2015).

> 'I was picked among a mass of bodies, with more than 80 per cent of burns on my body. It took years of reconstructive surgeries to get me in a sort of shape. I could have lived like a helpless victim, but I decided to fight for others like me, so that they get their rights, and no one has to go through what I endured.' (Xiaoying, a survivor of the Zhili fire and coordinator the China network speaking at the European Work Hazards Network meeting in Leeds, UK in 2010)

This has been one of the key campaigns of the networks. It is strongly believed and recognized that the way out of invisibility and marginalization is to organize actively. ANROEV provides a strong platform regionally to promote sustainable victims' organizations that can transform the 'helpless victims' to an active agency of change. Xioying has been inspiring other victims, not only in China but in other parts of Asia where victims organizing is still difficult. This includes victims exchange during the network meeting, among other occasions. Members of stronger victims' movements provide help and support to countries that have an evolving victims' movement, for example, more recently in Bangladesh, where a catastrophic fire and building collapse injured thousands.

Rana Plaza and Towards a Global Grassroots Network

In the mid-2000s, network members were focusing more on occupational disease, which is the highest cause of death for workers in Asia, since occupational diseases remain hidden and diagnosis remains a challenge. A large-scale industrial accident was deemed to be a thing of the past. This was to change again in 2012. Twin fires in garment factories, first in Ali Garments in Karachi, Pakistan in September, and later in Tazreen Garments in Bangladesh, killed over 300 workers and injured hundreds more. An ANROEV meeting in 2013 invited organizers and victims from Pakistan and Bangladesh to share their experiences. Accounts of these two fires rattled the members of ANROEV, as it was obvious that health and safety had reached a new low. It was clear then that supply chain deaths had just moved from Thailand to Karachi and Dhaka. Rana Plaza happened just a week before the ANROEV meeting—Bangladesh had sunk deeper in the quagmire of Savar.

Rana Plaza did not happen in a vacuum, in fact it was just waiting to happen with nations in Asia and elsewhere adopting a 'neoliberal export-driven' economic model and offering their citizens as low-cost labour so as to entice foreign investment. Asia's race to the bottom is an old story, yet nothing has fundamentally changed in the manner in which production is organized. The Rana Plaza accident created global outrage. It even shook the apologists

of the global supply chain, who for past few decades believed that companies could be forced to improve conditions within the existing system by applying sufficient consumer pressure. It was assumed that the garment brands would be forced to improve the working conditions, provide better wages, safety and benefits to workers, and even provide a conducive environment for building workers organizations. Rana Plaza clearly manifested that this never happened and workers became increasingly isolated in the web of the supply chain, which extends into workers homes and villages. However, post-Rana Plaza witnessed a range of frenzied activities and actions, both at the local and international level. People all around the world were shocked by the horror of the supply chain violence and genuinely wanted some change. The difficult question though was what would be the change? And more importantly, who will and should be the agency of change?

At the policy level, there have been many promises made to improve health and safety, starting with a Beijing declaration of 'Occupational Safety for all' in 1994 by the World Health Organization (WHO, 1994). The International Labour Organization in 2008 also made similar promises in a nicely worded 'Seoul Declaration' that 'calls for a preventative safety and health culture, which gives the right to a safe and healthy environment and which is respected at all national levels.' (ILO, 2008) However, at ground level it seems nothing has changed, despite these wonderful promises. Two decades after the deadly fires of Kader and Zhili, we have seen even worse in Pakistan and Bangladesh. Even though these international UN bodies seem to have membership from the states, yet the main beneficiaries are excluded from the decision-making process – the victims and the workers who are being exposed. The complete failure of health and safety at all levels is because of failure of grassroots democracy, where, in the absence of unions, the working class has almost no representation at any level of the decision-making process.

Moreover, the impacted population and the victims who are marginalized in this process do not have any democratic means to express themselves. In this regard, the victims organizing and the Asian network play an important role in bringing the voices of the impacted workers to the surface. They have realized that only they themselves can change their situation, and all they need is some space where they can exert and express themselves. The network has helped them in this process by providing them with a platform, and they are leading what has a potential to become a global solidarity network.

The network has a membership of similar networks in Europe and the US, and the Asian network members attend the meetings of their European and US counterparts. It has also been built systematically into a strong solidarity

network. In the recent Asian network meeting in Bangkok, 2013, ANROEV members proposed the formation of a global grassroots network that would result in a tougher global grassroots movement, and make their voice even stronger. In principle, the proposal was approved by both by the European and the US networks, however, to make it truly global it also needs members from Africa and Latin America, which would be its next task.

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Lembaga Informasi Perburuhan
LIPS
SEDANE

Resistance on the Continent of Labour

STRATEGIES AND INITIATIVES OF LABOUR ORGANIZING IN ASIA

This book provides an insight into how we see the global trajectories of capitalism from a labour perspective in the specific context and setting in Asia. It represents an ongoing effort by labour activists to challenge capital in their particular context. The book discusses a unique perspective on efforts towards the changes of labour relations, with concrete examples of the implementation of different workers' organizing strategies and initiatives. The book also shows that there are different strategies that workers can implement to change the current situation. *Resistance on the Continent of Labour* is about the 'labour side' of the story of the rise of Asia as the global factory. Workers in Asia identified strategic points of intervention where they are able to make a small change in order to trigger a broader and more significant change.

The authors of the book are activists and scholars who engaged in counter-hegemonic struggles against the primacy of the market functioning over the well-being of workers and society as a whole. They are directly engaged in advocacy work for social justice based on their locally-grounded experiences. They believe that knowing the situation in other countries is the first step for building international solidarity. The knowledge that the authors of this book presented is significant, but they need to be leveraged in further struggles in the future, to change Asia as the continent of labour to be humane, equal, and just.

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